

THE HONORABLE TIFFANY M. CARTWRIGHT

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRIS ADAMSON, an individual; JASON
BRAY, an individual; LUCAS COLE, an
individual; SHAUN DARBY, an individual;
CYNTHIA FAJARDO, an individual;
JAMES MAAS, an individual; DARRIN
RAYNER, an individual; ELIZABETH
REIGLE, an individual; RYAN OLIVAREZ,
an individual

Plaintiffs,

vs.

PIERCE COUNTY, a local government;
PIERCE COUNTY DEPUTY
PROSECUTING ATTORNEYS JAMES
SCHACHT AND FRED WIST, officially and
individually; SHERIFF PAUL PASTOR,
officially and individually; and ACTING
SHERIFF AND UNDERSHERIFF BRENT
BOMKAMP, officially and individually,
Defendants.

No. 3:21-CV-05592-TMC

PLAINTIFFS' MOTION FOR
RECONSIDERATION IN PART OF
ORDER ON PLAINTIFFS' CR 37 MOTION
ON SPOILIATION OF TEXTS, DKT. 203
AT 2, DENYING NEGATIVE INFERENCE

NOTED: May 8, 2024 within 14 days of the
Court's Order dated May 3, 2024, Dkt. 203

MOTION

Plaintiffs obtained newly discovered evidence on May 3, 2024, specifically work-related text messages, authored by Defendant Bomkamp, from his personal cell phone with other speaking agents for Pierce County (Hausner) on personal technology. Bomkamp testified in deposition that he did not text on work related matters on his group chat set up with the Sheriff's Department command on their personal devices. Bomkamp's dishonest testimony is evidence that should

weigh in favor of a spoliation instruction at trial. Defense counsel Cornelius' statement at the motion hearing that Bomkamp did not text was incorrect because Bomkamp admitted to texting, but denied doing so on personal technology, which plaintiffs are able to now prove is also not true. This new evidence weighs in favor of sanctions. Importantly, the Sheriff's Department has not completed its review and production of text messages responsive to the PRR, which may include texts responsive to request for production 20, 21, and 22 that are specific to plaintiffs and the matters at issue in this case. Pierce County has an affirmative duty to provide responsive texts, which Bomkamp previously testified falsely would not exist. Plaintiffs' motion is made pursuant to LCR 7 (h) and CR 60(b)(2), (3), and (6).

FACTS

Plaintiffs' Public Records Request

Pierce County Sheriff's Department has been processing plaintiffs' public records request of June 8, 2023 for all group text messages among Defendant Bomkamp and department command staff, Paul Pastor, Ed Troyer, Nick Hausner, Patti Jackson, Lauren Wallin, Kevin Roberts, Gary Sanders, Mike Blair and Micah Lundborg from personal or county owned technologies. Affixed Mell Dec. Ex. 1 (PRR Request). Plaintiffs submitted this public records request PRR P025140-060823 following Defendant Bomkamp's deposition wherein he testified to the text group among command on personal technology in his deposition May 17, 2023. Affixed Mell Dec. Ex. 2 (Bomkamp Dep.). To date, PCSD has produced eight installments. The eighth installment was produced on May 3, 2024, the day after the Court ruled on the spoliation motion. Affixed Mell Dec. The eighth installment contains work related texts among command to and from defendant Bomkamp and speaking agent Hausner and others. Affixed Mell Dec. Ex. 3 (Installment 8). PCSD has more to produce to include texts captured using Smarsh technology implemented November

1 15, 2021 for County owned technology. Affixed Mell Dec. Ex. 4 (E-mail update on PRR). Texts
 2 responsive to RFP 20, 21, and 22 may be in the texts not yet produced. Pastor, Troyer, and Jackson
 3 have denied retention of their work texts on personal technologies; other command staff in the
 4 private technology group chat have retained and produced work texts among them using private
 5 technologies. Affixed Mell Dec. Ex. 5 (PRR Responses). The content of texts produced from
 6 PSCD Command's group text on personal technology indicate defendants established and used
 7 their personal cell phones to avoid detection. Affixed Mell Dec. Ex. 3 and 5. Defendants texted
 8 about matters in litigation. *Id.* The texts produced so far date back to 2021 and 2022.

11 **Plaintiffs' Discovery Requests for Production No. 20, 21, 22**

12 Since 2021, plaintiffs have sought text communications related to this case. Dkt. 138 at
 13 24. RFP 20 and 21 requested text logs for communications about plaintiffs. Dkt. 138 at 23-24.
 14 RFP No. 22 sought texts about plaintiffs or the allegations in the Complaint from personal or work
 15 owned technologies. *Id.* Defendants have not identified any responsive texts. *Id.*

18 **Defendants' Preservation Obligations**

19 Defendants knew plaintiffs had retained counsel for anticipated litigation in July of 2020.
 20 Dkt. 1-2 at 135. Plaintiffs filed their formal claims for damages on September 29, 2020. Dkt. 1-
 21 2 at 12, Dkt. 32 at 4. Plaintiffs filed suit on July 26, 2021. Dkt. 1 at 2. As of November 17, 2021,
 22 defendants attested they understood their obligations to preserve discoverable information. Dkt.
 23 14 at 5.

26 **Defendants' Destruction**

27 Pierce County destroyed defendant Bomkamp's phones and the corresponding data such
 28 as texts after anticipating litigation on September 2, 2020, May 10, 2021, and September 1, 2022.
 29 Dkt. 138 at 120, 122, 137. Bomkamp had four work phones during the relevant time period
 30
 31

1 applicable to this case. One work phone Bomkamp claimed “fell out of pocket while working in
 2 field on 11/21/21” that the department documented as lost on September 1, 2022. Dkt. 138 at 137.
 3 Bomkamp was Undersheriff and not likely working in the field at that time. Pierce County
 4 similarly destroyed Pastor’s phones, February 18, 2020, January 25, 2021, April 17, 2021. Dkt.
 5 138 at 120. Bomkamp produced limited work texts from his personal phone in response to the
 6 PRR, not the RFPs. Affixed Mell Dec. Ex. 5. Pastor said he retained none. *Id.* Jackson and Troyer
 7 have stated they did not retain work texts from their personal technology. Affixed Mell Dec. Ex.
 8 5. Jackson is presently running against Fajardo for Sheriff since Troyer is not running.

11 **Defendants’ Dishonesty**

12 Defendants have deliberately misled plaintiffs and the Court about texting and never timely
 13 looked for responsive records. Defendants may still have responsive records that they have failed
 14 to produce that have been compiled but not yet disclosed using Smarsh technologies implemented
 15 in November of 2021 in response to plaintiffs PRR Request.

16 On May 2, 2024, defense counsel Cornelius in opposition to the CR 37 motion stated
 17 Bomkamp did not text. Bomkamp testified in deposition that he did text. Affixed Mell Dec. Ex.
 18 2. (Bomkamp Dep.). Bomkamp testified that he did not text work texts with his command staff
 19 using his personal technology. *Id.* Bomkamp does text using his personal phone about work
 20 matters. Affixed Mell Dec. Ex. 3 and 5 (Installment 4 and 8). So does the County’s speaking
 21 agent Nick Hausner, which he downplayed in his deposition. *Id.* and Affixed Mell Dec. Ex. 6
 22 (Hausner Dep.). As of May 17, 2023, defendant Bomkamp had not searched for any texts
 23 responsive to RFP 20, 21, or 22. Pastor was not well informed about the text practices of his office.
 24 Affixed Mell Dec. Ex. 6. (Pastor Dep.)

29 **Plaintiffs’ CR 37 Motion - Spoliation**

Plaintiffs moved under CR 37 for a spoliation instruction. Dkt. 142. Plaintiffs moved for the instruction following several motions to compel discovery specific to text messages and the Court ordering Pierce County to produce requested text records and texts were not produced. RP 12/19/24. The Court denied the motion for sanctions on two grounds. The Court found the absence of any intentional wrongdoing and further was unable to find any texts relevant because responsive texts had not been produced or located from any other source to prove the existence of relevant records. Dkt. 203 and RP 5/2/224. This motion provides direct evidence of misconduct in that the witnesses have been deceptive and dishonest in addition to intentionally delaying substantive responses. Defendants' deception and dishonesty should not be left unaddressed. Plaintiffs have been denied access to text evidence that given the recent texts made available through the PRA provide constructive evidence that defendants likely hid relevant texts in this matter on personal technologies or on technologies that have since been destroyed.

LEGAL ARGUMENT

The standard of proof for spoliation sanctions is preponderance of the evidence. *Fast v. GoDaddy.com, LLC*, 340 F.R.D. 326 (D. AZ 2022). Courts have inherent power to levy sanctions in response to abusive litigation practices. *Leon v. IDX Systems Corp.*, 464 F.3d 951 (9th Cir. 2006). Deliberately deceptive practices that undermine the integrity of judicial proceedings may be severely sanctioned because such intentional misconduct is "utterly inconsistent with the orderly administration of justice." *Id.* The failure to suspend automated destruction practices upon notice of litigation is sufficient to warrant instruction. *Apple Inc. v. Samsung Electronics Co., Ltd.*, 888 F.Supp.2d 976 (N.D. Cal. San Jose Div. 2012). In the 9th Cir., the spoliation of evidence raises a presumption that destroyed evidence goes to the merits of the case and that such evidence was adverse to the party who destroyed it. *Id.* at 993. Too strict a standard of proof regarding the likely

1 contents of the destroyed evidence would allow parties who have destroyed evidence to profit from
 2 that destruction. *Id.* citing *Residential Funding*, 306 F.3d at 109. It is not necessary to prove what
 3 was destroyed: “though neither Apple nor the Court may ever know the contents of any destroyed
 4 Samsung emails, the fact that the emails of key Samsung witnesses were among those destroyed
 5 permits the reasonable inference that Apple was prejudiced by Samsung’s spoliation.” *Id.* at 993.

7 The appellate court concluded the following instruction appropriate:

9 “Samsung Electronics Company has failed to preserve evidence for Apple’s use in this
 10 litigation after its duty to preserve arose. Whether this fact is important to you in reaching
 11 a verdict in this case is for you to decide.”

12 Plaintiffs have more evidence of abusive discovery practices by Pierce County in this matter than
 13 was evident in the *Apple Inc.* case where an instruction was authorized.

14 Here Pierce County has admitted that it destroyed the phones used by defendants Pastor
 15 and Bomkamp since it knew of the potential litigation. The destruction of their technologies and
 16 the failure to having even attempted to search such technologies prior to destruction evidences
 17 disregard of the discovery process. The new evidence now proves that Bomkamp testified
 18 untruthfully about his text practices and Hausner was deceptive as well. Given the new evidence
 19 of dishonesty and deception, plaintiffs renew their request for a spoliation instruction and request
 20 the Court sanction Bomkamp for his dishonesty.

23 CONCLUSION

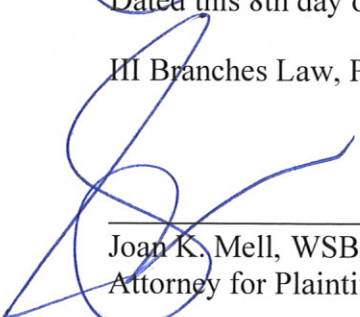
24 For the reasons previously stated, plaintiffs respectfully request the Court grant
 25 reconsideration and order sanctions and authorize a spoliation instruction and that Pierce County
 26 immediately produce any texts from the PRR search that mention plaintiffs or their claims in this
 27 litigation.
 28
 29
 30
 31

1 I, Joan K. Mell, certify this brief meets the word count requirements of less than the 2500
2 rule limit.

3
4
5 
Joan K. Mell, WSBA # 21319

6
7 Dated this 8th day of May, 2024 at Hamilton, MT.

8 III Branches Law, PLLC

9
10
11 
Joan K. Mell, WSBA #21319
12 Attorney for Plaintiffs

13 **AFFIXED DECLARATION**

14
15 I, Joan K. Mell, make the following statement under oath subject to penalty of perjury
16 under the laws of the State of Washington and the United States:

17 Attached are true and correct copies of the following documents:

18 Exhibit 1: Plaintiffs' PRR for Group Texts

19 Exhibit 2: Excerpted Bomkamp Deposition Testimony

20 Exhibit 3: PRR Installment 8 produced May 3, 2024.

21 Exhibit 4: Public Records Officer Communications

22 Exhibit 5: PRR Installments

23 Exhibit 6: Excerpted Pastor and Hausner Depositions

24
25 Dated this 8th day of May, 2024 at Hamilton, Ravalli County, MT.

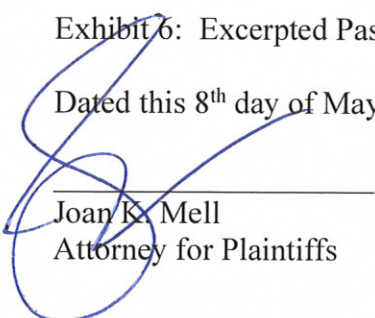
26
27 
Joan K. Mell
28 Attorney for Plaintiffs

EXHIBIT 1

Attention: Public Records

Pierce County Sheriff
 3602 Pacific Avenue, Suite 100
 Tacoma, WA 98418
 EMAIL: SHRpublicrecords@pierccountywa.gov
 FAX: (253) 798-7366



Pierce County
Request for Access to
Public Records

Requests and production are governed by Chapter 42.56 RCW and Chapter 2.04 Pierce County Code (PCC)

Instructions:

1. Complete Section A of the form. If you are requesting a list of individuals you must also complete Section B.
2. Mail, email, personally deliver, or fax completed form to the designated public records officer for the Pierce County Department/Office shown above.

SECTION A Requester Contact Information/Description of Requested Records - Please PRINT

Requester Name Joan K. Mell		Business Name Ill Branches, PLLC
Mailing Address 1019 Regents Blvd. Ste. 204		City, State - Zip Code Fircrest, WA 98466
Phone Number 253-566-2510	Fax Number none	Email joan@3brancheslaw.com

Method of Record Review. Please Select one:

- ☐ Do not make copies, but arrange for in person inspection at department, PCC Chapter 2.04. I may request copies of specific records after in person review.
- ☐ Mail copies ☒ Email records via file transfer protocol ☐ Hold copies for pickup

Please describe the SPECIFIC record(s) you are requesting, including dates(s):

make available for public inspection all group text messages among Paul Pastor, Brent Bornkamp, Michael Lundborg, Nick Hausner, Patti Jackson, Ed Troyer, Gary Sanders, Kevin Roberts, Lauren Wallin, or Mike Blair on work or personal technologies that relate to the conduct of government or the performance of any governmental or proprietary function from 2019 to the present date. Please provide affidavits per Nissen case for searches of private technologies. This request is for all group chats or conversations among all or some of the above listed employees.

[Signature]
 Signature of Requester

6/8/2023
 Date Submitted

SECTION B The following must also be signed ONLY if you request any list of individuals.

I declare under penalty of perjury under the laws of Washington that the following is true and correct: I will not use any requested list of individuals for a commercial purpose (profit expecting activity).

Signed this ____ day of _____, 202__ at _____ (city), _____ (state). RCW 42.56.070(8) and PCC 2.04.030(D)(4)

Requester's Signature: _____

EXHIBIT 2

1 So I'm going to instruct him not to. I can give
2 it to you separately, Joan, and I think that's
3 sufficient. You don't need to have it in this record.

4 I question your motives for demanding that it be
5 made in the record. So I'm going to instruct the witness
6 not to.

7 Q (By Ms. Mell) Are you going to give me your
8 phone number?

9 A On advice of counsel, I'm declining to answer
10 that question.

11 Q Do you text from your personal phone?

12 A Yes.

13 Q Do you text command?

14 A Occasionally.

15 Q Okay. And have you checked your personal cell
16 data to look for text responsive to the discovery
17 requests in this case?

18 A No.

19 Q Why not?

20 A I don't use my personal phone for work-related
21 purposes.

22 Q When you text command, do you ever comment about
23 work?

24 A No.

25 Q So if you need to talk to command about work,

1 what do you do?

2 A I talk to them on my work phone or text them on
3 my work phone.

4 Q Okay. Did you search your work phone for
5 content related to this case?

6 A I haven't yet.

7 Q Why not?

8 A I haven't had time. I'm still working.

9 Q Have you been asked to search?

10 MR. CORNELIUS: Object to form.

11 Go ahead and answer if you can answer.

12 THE WITNESS: I believe there may be
13 something --

14 MR. CORNELIUS: Again, I'll object to the extent
15 it calls for any attorney-client privilege.

16 But go ahead and answer to the extent that you
17 can.

18 THE WITNESS: My recollection is there is a
19 request related to phone records, but I can't be
20 specific.

21 Q (By Ms. Mell) And do you know when you learned
22 that there was a request for your information?

23 A Not specifically.

24 Q Do you remember deliberately making this
25 decision not to respond to that request?

1 MR. CORNELIUS: Object to form.

2 Go ahead and answer if you can answer.

3 **THE WITNESS: I did not deliberately not**
4 **respond.**

5 Q (By Ms. Mell) When do you intend to respond?

6 MR. CORNELIUS: Object to form.

7 But go ahead and answer if you can answer.

8 **THE WITNESS: I need to make it a priority the**
9 **rest of this week and early next week to provide the**
10 **information that I can to my attorney.**

11 Q (By Ms. Mell) Will you check your personal
12 phone just to be sure you don't have any work-related
13 communications there?

14 MR. CORNELIUS: Object to the form.

15 Go ahead and answer if you can answer.

16 I believe this witness already testified
17 regarding that question. So asked and answered too.

18 Go ahead and answer if you can answer.

19 **THE WITNESS: I will check. I'm confident**
20 **there's nothing.**

21 Q (By Ms. Mell) Did you call and text Paul Pastor
22 in 2020 in regards to the SIU?

23 **A I don't know. I don't have any specific**
24 **recollection. I don't ever remember texting Paul Pastor.**

25 Q When you say you don't ever remember texting

1 Paul Pastor, how did you communicate with Paul Pastor?

2 A Typically by phone or in person.

3 Q Why did you do it that way?

4 A That was the way that we typically communicated.
5 I don't have a reason.

6 Q Did you typically communicate that way so that
7 there would not be a written record subject to public
8 disclosure?

9 MR. CORNELIUS: Object to form.

10 Go ahead and answer if you can answer.

11 THE WITNESS: No.

12 Q (By Ms. Mell) Did you have you any issues
13 whether to text or talk in person or via telephone to
14 your colleagues?

15 MR. CORNELIUS: Object to form.

16 But go ahead and answer if you can answer.

17 THE WITNESS: I typically don't text. I
18 typically have conversations with people. I'm not a
19 person that texts a lot.

20 Q (By Ms. Mell) How many work phones have you had
21 since 2019?

22 A At least two. Could be more.

23 Q Do they all have the same phone number?

24 A Yes.

25 Q And do you know how the department -- well,

1 strike that.

2 What is your practice with regard to the text
3 messages you create on your work phone?

4 MR. CORNELIUS: Object to the form.

5 Go ahead and answer if you can answer.

6 THE WITNESS: What is my practice with them?

7 Q (By Ms. Mell) Yeah.

8 A My understanding is that they are captured
9 through -- through the department's email system. So
10 they are retained in that manner. I don't retain
11 everything on my phone.

12 Q So do you delete your texts?

13 A Yes.

14 Q You do that routinely?

15 A I don't have a routine for when I do it, no.

16 Q And you've deleted your texts since you were
17 issued a department phone?

18 A Yes.

19 MR. CORNELIUS: Object to form.

20 But go ahead and answer if you can answer.

21 Q (By Ms. Mell) And what do you know about the
22 department capturing texts in 2019?

23 A I don't know when it started happening.

24 Q Okay. Do you think it's been fairly recent?

25 A I don't know if it was before or after 2019.

1 Q Do you know if it was in relationship to the
2 lawsuit against the department for deleting texts?

3 MR. CORNELIUS: Object to form.

4 But go ahead and answer if you can answer.

5 **THE WITNESS: I don't know if that was causal.**

6 Q (By Ms. Mell) Do you recall learning that texts
7 were being deleted?

8 A Yes.

9 Q What did you do about it?

10 MR. CORNELIUS: Object to form.

11 Go ahead and answer if you can answer.

12 **THE WITNESS: I didn't do anything about it.**

13 Q (By Ms. Mell) Why not?

14 MR. CORNELIUS: Same objection.

15 **THE WITNESS: I don't know.**

16 Q (By Ms. Mell) Do you know if anybody did
17 anything about it?

18 A No, I don't.

19 Q Do you know now whether or not your texts that
20 you delete are being retained?

21 A My understanding is they are, yes, through the
22 email system.

23 Q And how are they being retained through the
24 email system?

25 A I know that when there is a text on your phone,

1 **shortly thereafter, the text shows up in your email.**

2 Q And then what do you do about the emails? Are
3 you able to delete the email?

4 A I can delete it from my personal account, but it
5 never -- it's retained by the county.

6 Q How do you know that?

7 A That's what I've been told. I don't recall from
8 whom.

9 Q Have you ever performed any audit functions to
10 know whether or not it's working?

11 A No.

12 Q Do you remember who told you that?

13 A No.

14 Q Is it correct that that change in technology
15 occurred in 2022?

16 A I don't know.

17 Q Do you know whether phones that contain digital
18 data like text messages have been wiped out and wiped
19 clean, deleting text messages and communication data when
20 employees leave the department?

21 MR. CORNELIUS: Object to form.

22 Go ahead and answer if you can answer.

23 **THE WITNESS: I don't know.**

24 Q (By Ms. Mell) And do you know that IT wipes
25 clean the phones when they issue a new phone?

1 MR. CORNELIUS: Object to form.

2 But go ahead and answer if you can answer.

3 **THE WITNESS: I don't know that, no.**

4 Q (By Ms. Mell) Do you know what kinds of
5 communications you create are subject to retention and
6 how long?

7 MR. CORNELIUS: Object to form.

8 But go ahead and answer if you can answer.

9 **THE WITNESS: I don't know how long. I'm**
10 **guessing if I sent emails, documents, notes; I believe**
11 **text messages, phone records.**

12 Q (By Ms. Mell) Do you know how long the
13 retention schedule is for those communications you
14 create?

15 MR. CORNELIUS: Object to form.

16 Go ahead and answer if you can answer.

17 **THE WITNESS: I don't know. Seven years is**
18 **coming to my head, but I could be wrong.**

19 Q (By Ms. Mell) Do you use Instant Messaging?

20 **A I don't even know what that is.**

21 Q Do you use any digital platforms that do not
22 continue to exist after receipt?

23 **A No.**

24 MR. CORNELIUS: Object to form.

25 Q (By Ms. Mell) Do you communicate through any

1 applications on your laptop with your command staff?

2 A No.

3 MR. CORNELIUS: Object to form.

4 THE WITNESS: Not other than email.

5 Q (By Ms. Mell) Right. I was asking about other
6 platforms than email.

7 Do you recall getting any texts in your email in
8 2020?

9 A No.

10 Q Have any of your staff been disciplined for
11 deleting text messages?

12 A I don't think so.

13 Q Is it against department policy to delete text
14 messages?

15 A Possibly. I don't know for sure. It's a public
16 record; I would assume, yes.

17 Q Is there a specific policy on texting within the
18 department?

19 MR. CORNELIUS: Object to the form.

20 But go ahead and answer if you can answer.

21 THE WITNESS: I don't know the specific policy.

22 My kind of vague recollection is it's -- texting can be
23 used for kind of nonspecific report-related things like,
24 hey, do you want to meet at such and such a coffee shop
25 or I'll be done in 10 minutes and we can go to lunch,

1 those types of things. And those types of things don't
2 need to be retained. Anything that's work related needs
3 to be retained.

4 Q (By Ms. Mell) Do you know about the Signal
5 platform?

6 A The what?

7 Q An application called Signal?

8 A No.

9 MR. CORNELIUS: Object to form.

10 Q (By Ms. Mell) Do you group chat on your private
11 phone?

12 A Yes.

13 Q And do you group chat with colleagues from work?

14 A Occasionally.

15 Q And who is in your group chat?

16 MR. CORNELIUS: Object to form.

17 But go ahead and answer if you can answer.

18 THE WITNESS: I don't know for sure. I think
19 it's probably the sheriff, Lauren Wallin, Eddy Jackson,
20 Nick Hausner, Kevin Roberts, Micah Lundborg, possibly
21 Gary Sanders.

22 Q And what's this group chat called?

23 MR. CORNELIUS: Object to form.

24 But go ahead and answer if you can answer.

25 THE WITNESS: I don't think it has a name.

1 Q (By Ms. Mell) And how do you use it?

2 MR. CORNELIUS: Object to form.

3 But go ahead and answer if you can answer.

4 Are you talking about currently, Joan? Are you
5 talking about currently?

6 Q (By Ms. Mell) Ever.

7 MR. CORNELIUS: Object to form.

8 But answer if you can answer.

9 **THE WITNESS: I don't have any specific**
10 **recollection right now of what it was used for. It**
11 **wasn't work related. I know that because there's been**
12 **discussion about dump use that's for work-related**
13 **activity.**

14 Q (By Ms. Mell) Okay. But they are all
15 coworkers; right?

16 **A Yes.**

17 Q Okay. And was that group chat established for
18 political reasons? So you could be politically
19 supportive of one another?

20 It didn't come into being with the campaign?

21 I think that was a no.

22 These individuals you identify, do you consider
23 them your peer group, I mean, like friends?

24 **A Yes.**

25 Q So you socialize with them?

1 **A Can you be specific on what you mean by**
2 **socialize?**

3 Q Off-work-hours activities together.

4 **A No.**

5 Q Okay. So then what is the purpose of your group
6 chat with your coworkers on your private phone?

7 **A I can't even recall what the topic was the last**
8 **time we all did it.**

9 Q Was it intended to allow you to communicate
10 without it being a public record?

11 **A No.**

12 Q Was it intended to -- I'll strike that.
13 What do you recall the group chatting about?

14 **A I can't recall anything right this particular**
15 **moment.**

16 Q Are you able to look at your phone and tell or
17 refresh your recollection right now?

18 **A I don't have it with me.**

19 Q I would ask that you revisit that group chat.
20 And if there's any content that in any way relates to
21 county business, that it be made available.

22 MR. CORNELIUS: I'll object to form.

23 MS. MELL: What's the objection?

24 MR. CORNELIUS: Again, Joan, I don't think that
25 has any relevance to this proceeding. And to the extent

1 that you're asking something that goes beyond this
2 deposition or anything involving this proceeding that I
3 have an objection to. I think he's answered the
4 question.

5 MS. MELL: He says he couldn't recall, Frank.

6 Q (By Ms. Mell) Back to Blair.

7 Were you involved in what he disclosed to the
8 press?

9 A I don't have a specific recollection of
10 discussing it. I know that if we responded to the press,
11 we likely did so with counsel. It was an agreement as to
12 how we would respond to inquiries from the press.

13 Q So tell me about that agreement.

14 MR. CORNELIUS: Object to form, to the extent
15 that it requires disclosure of attorney-client privilege.

16 To that extent I would instruct the witness not
17 to answer. To the extent that he can answer, go ahead
18 and answer.

19 THE WITNESS: I'm not sure just what happened
20 here.

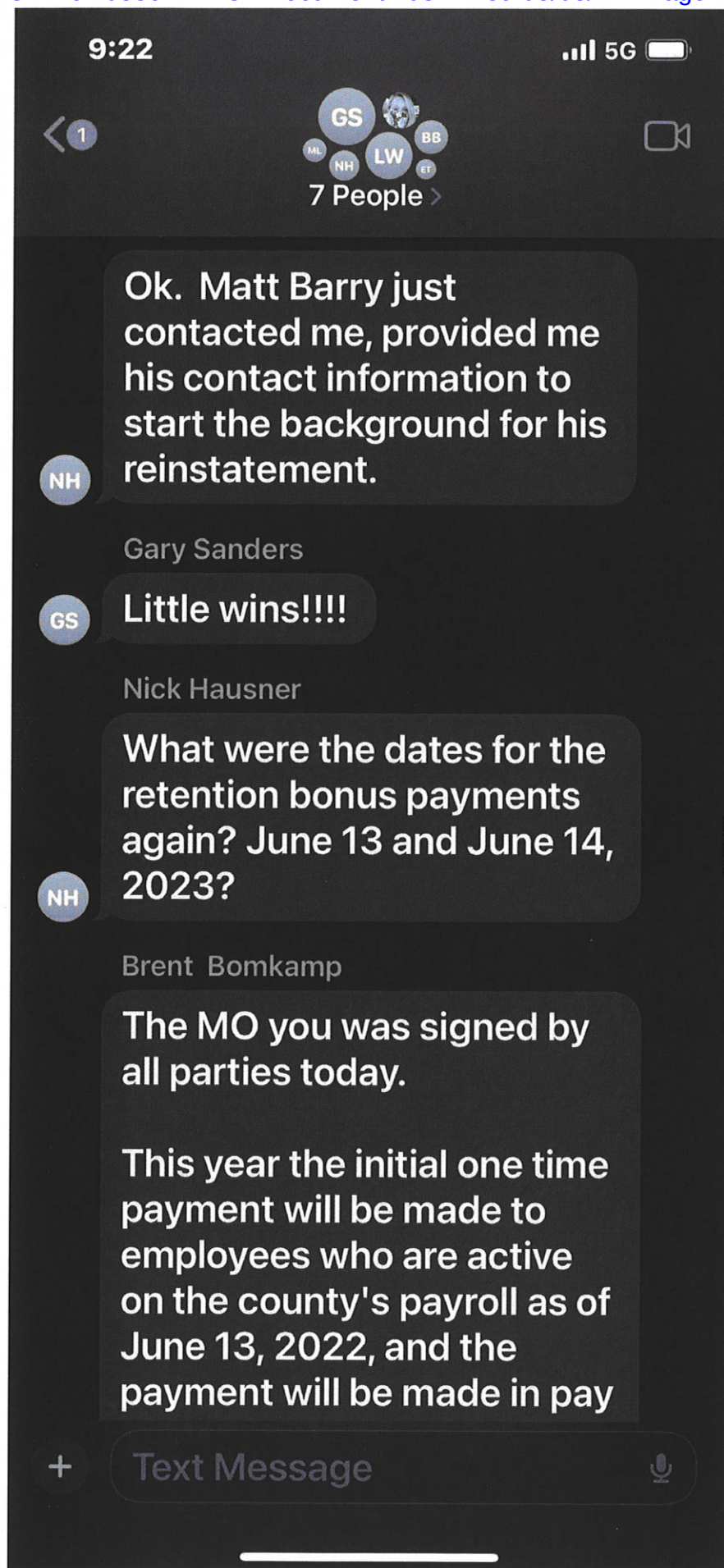
21 I guess on advice of counsel, I'm declining to
22 answer.

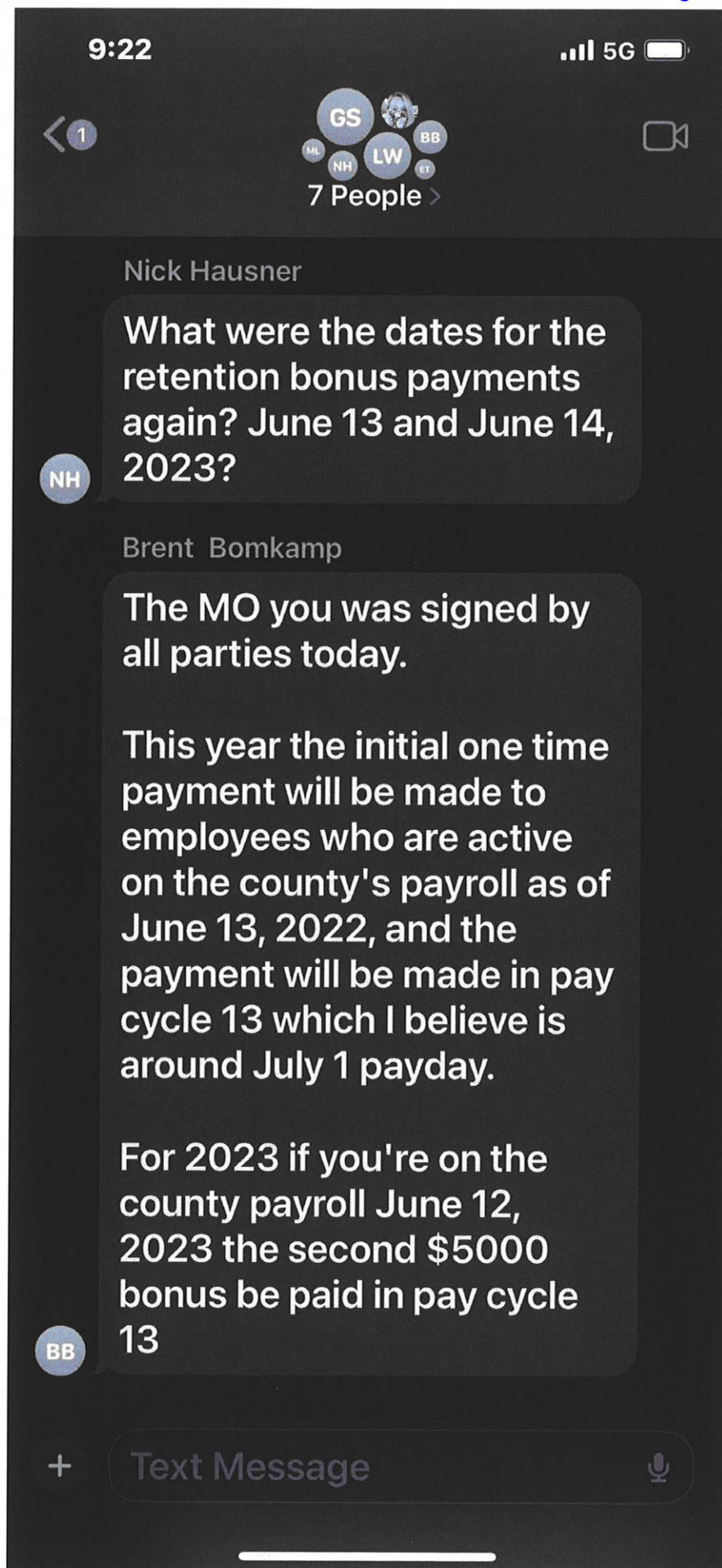
23 MS. MELL: Frank, do you want to revisit that
24 objection, given your motion?

25 MR. CORNELIUS: Which motion are you referring

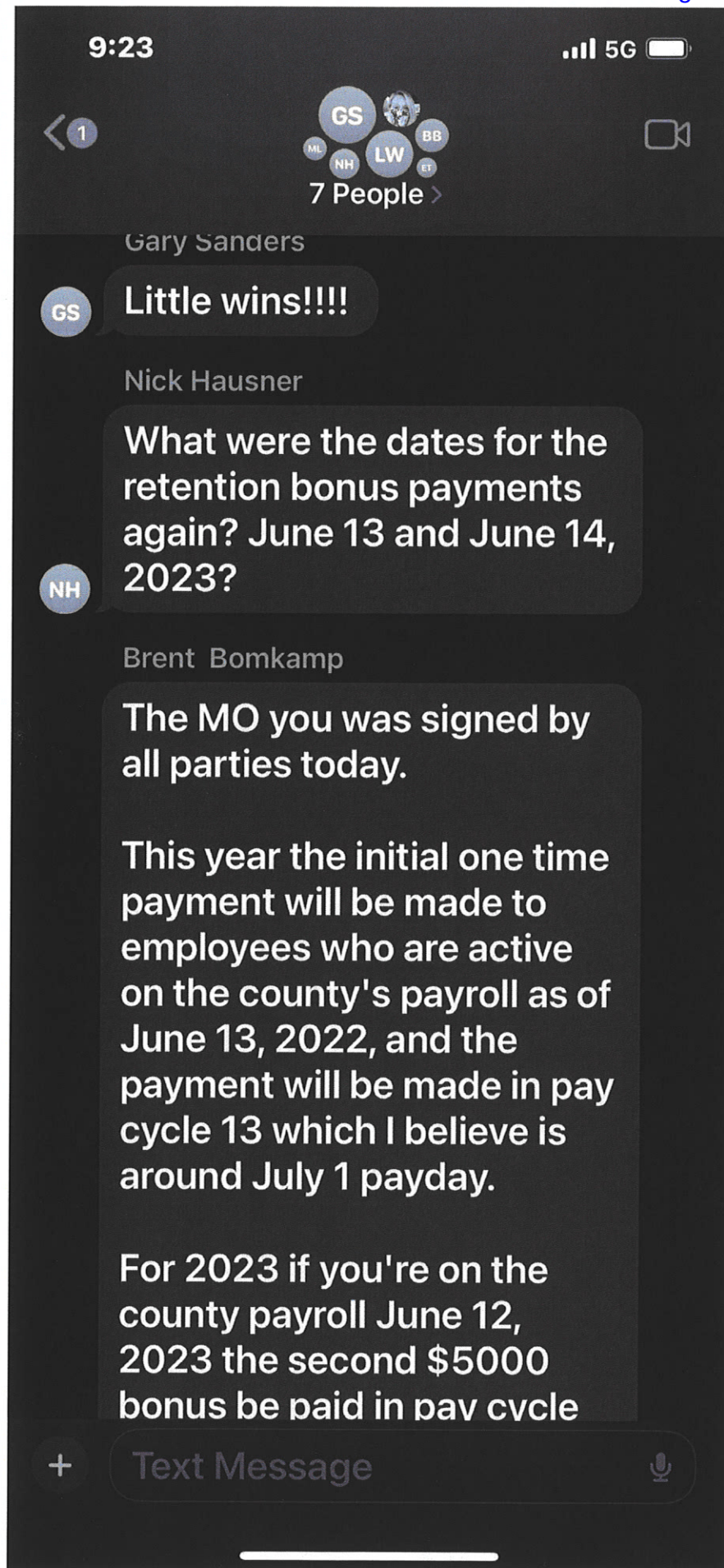
EXHIBIT 3

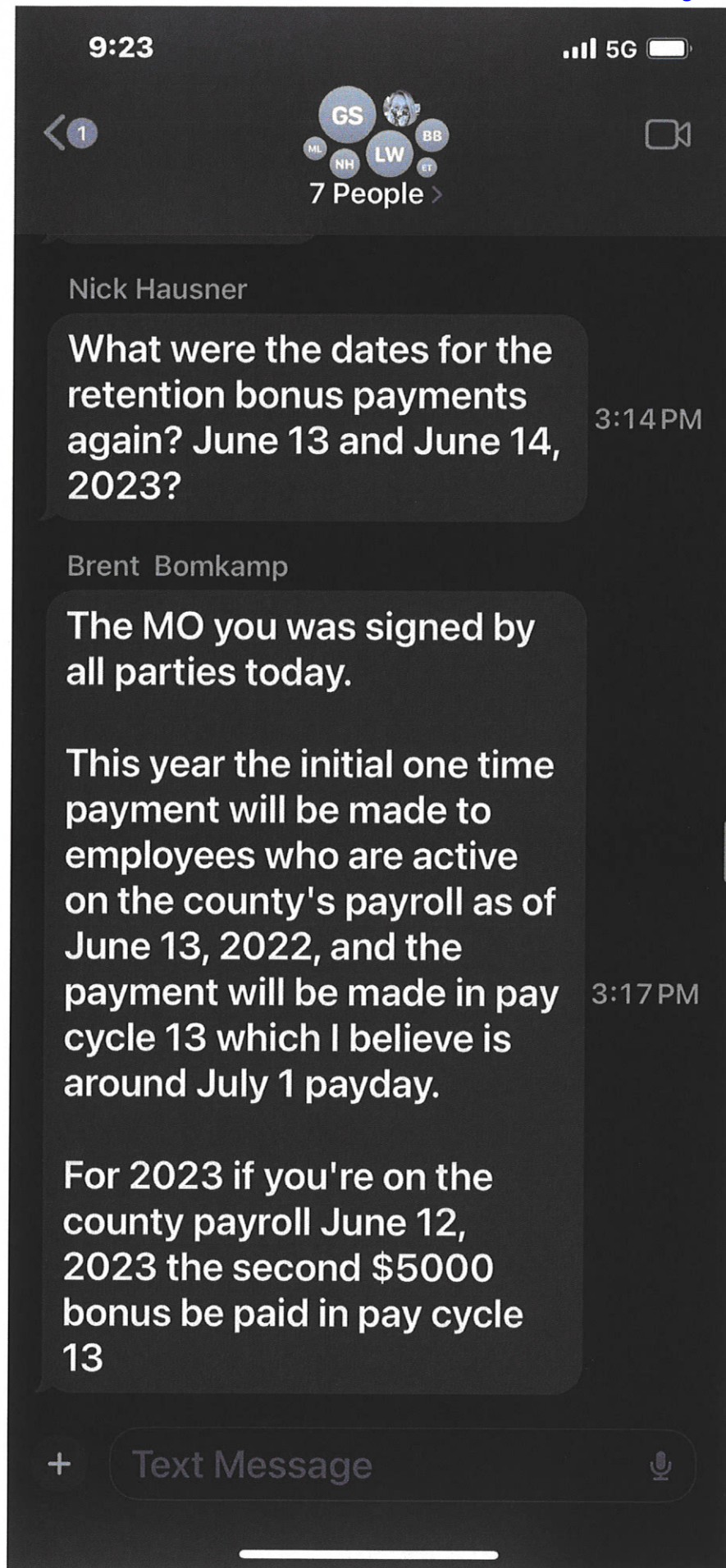


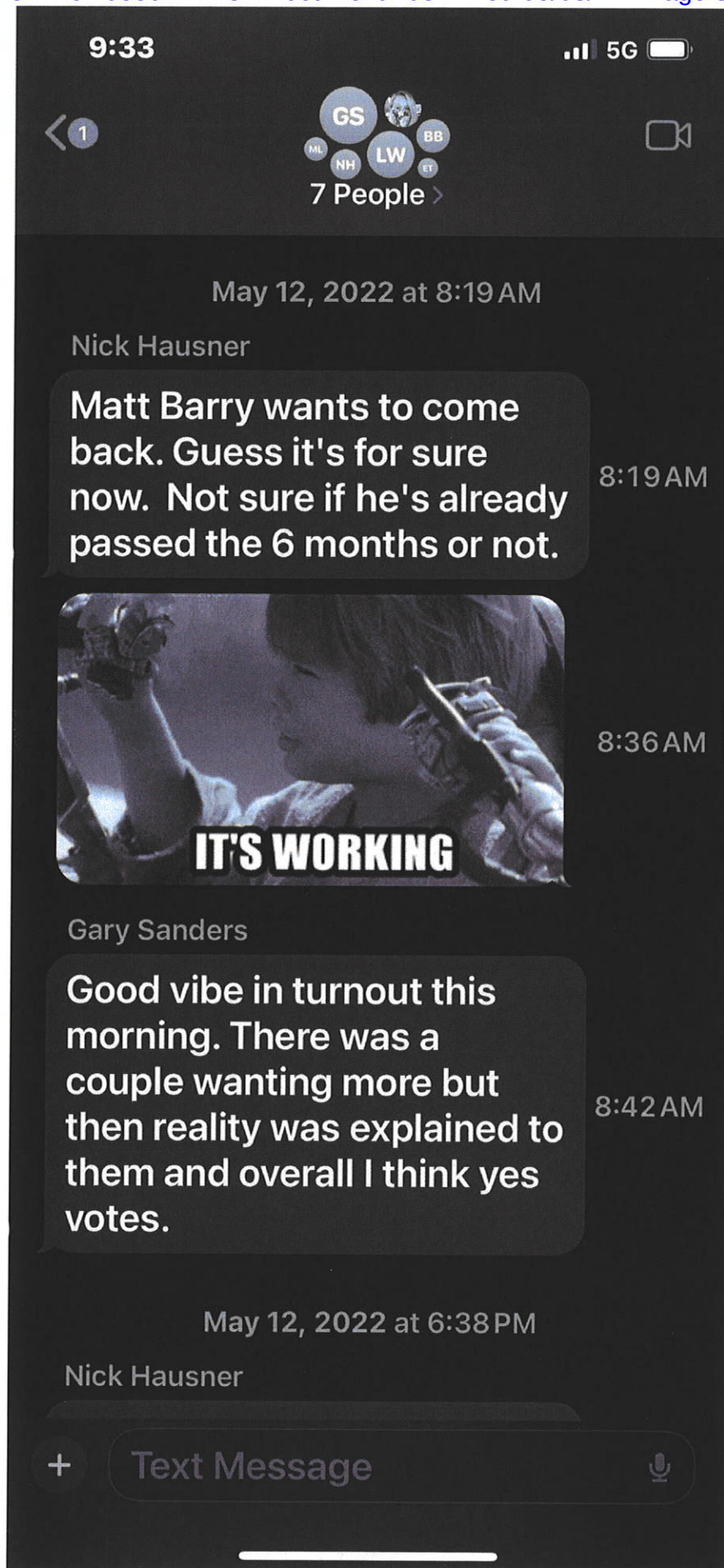


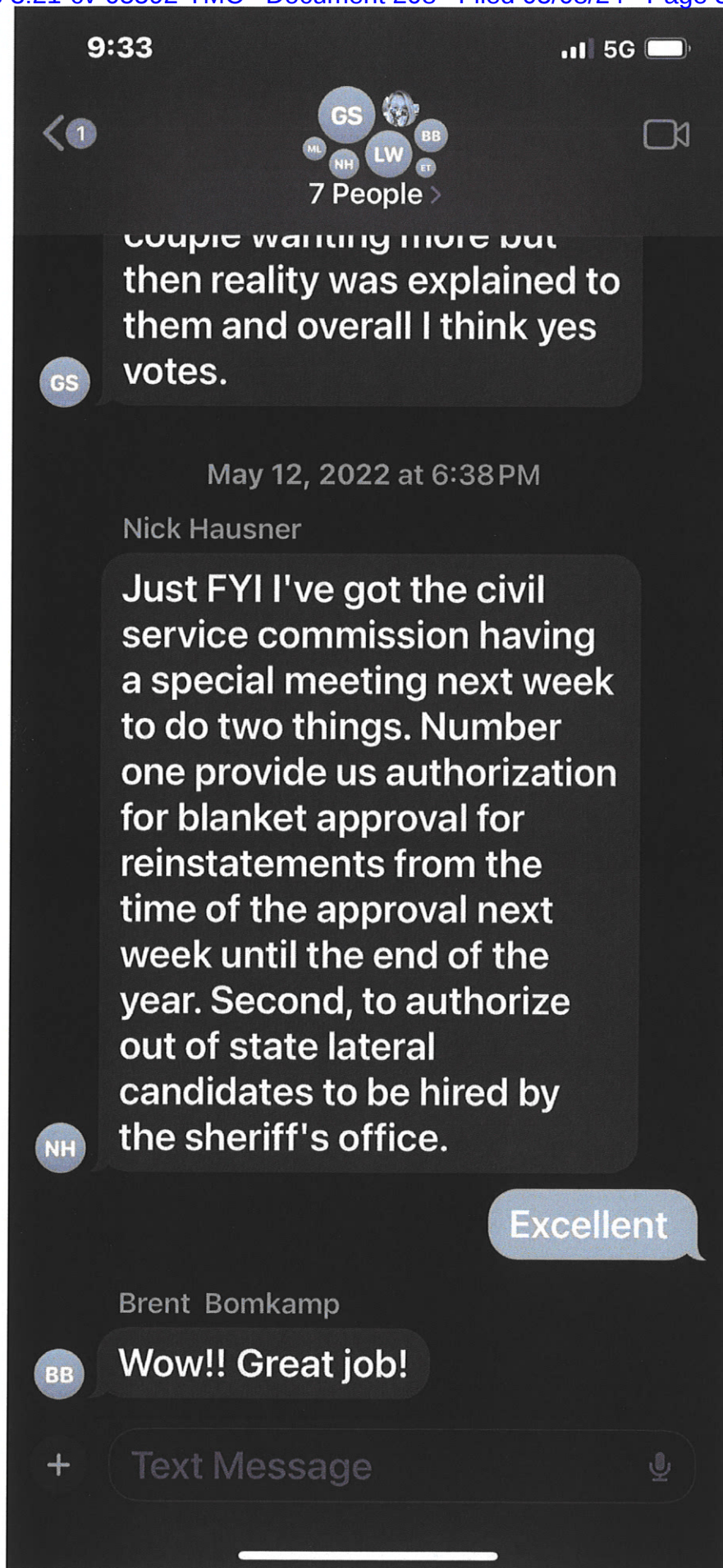


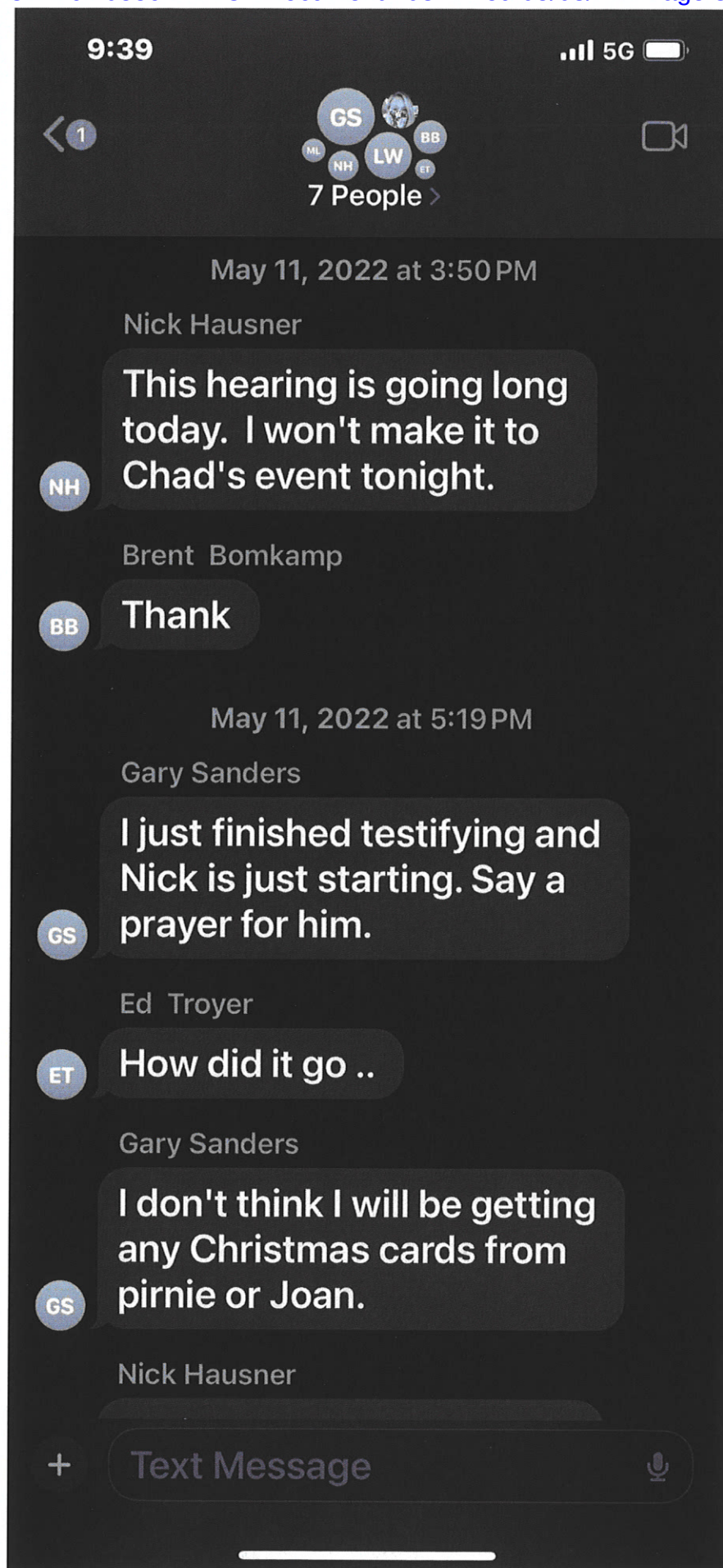


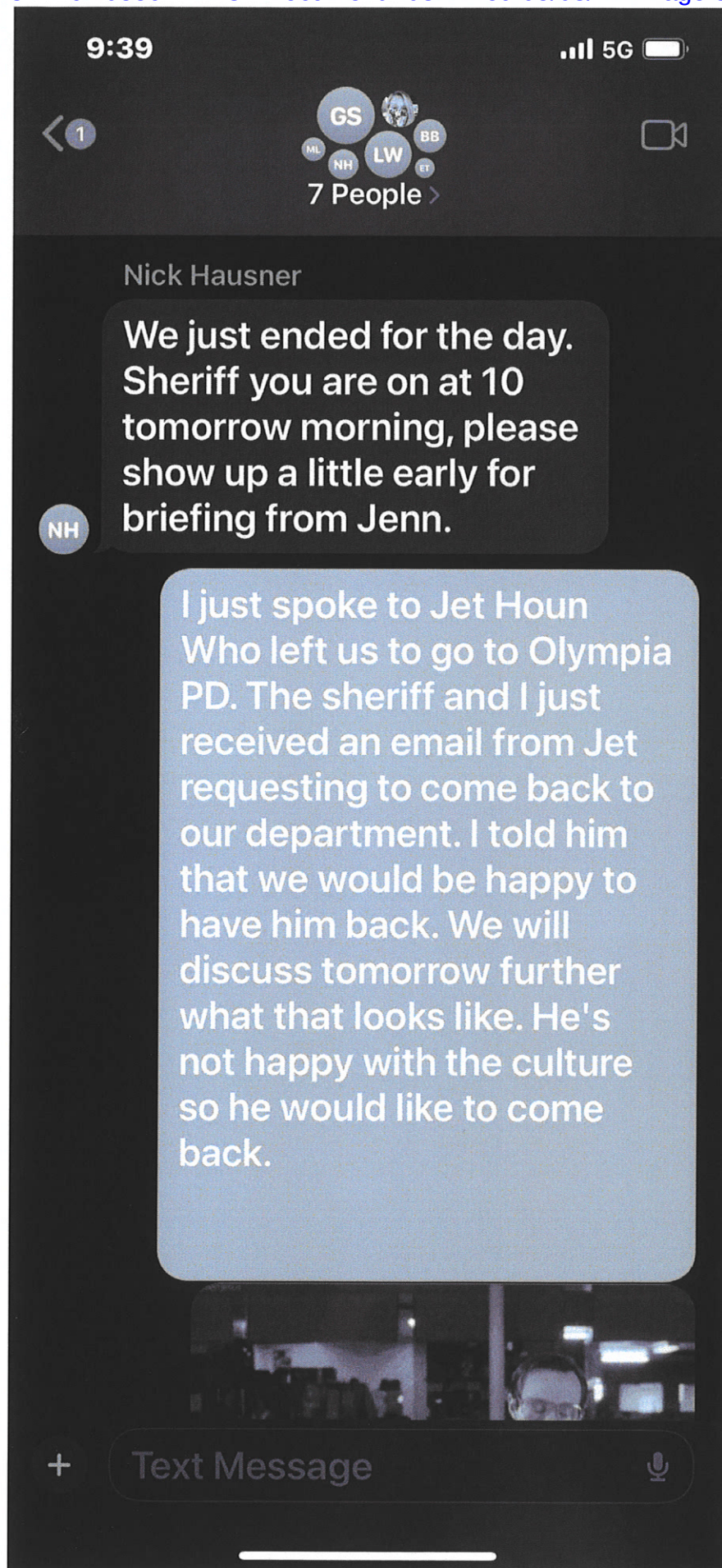


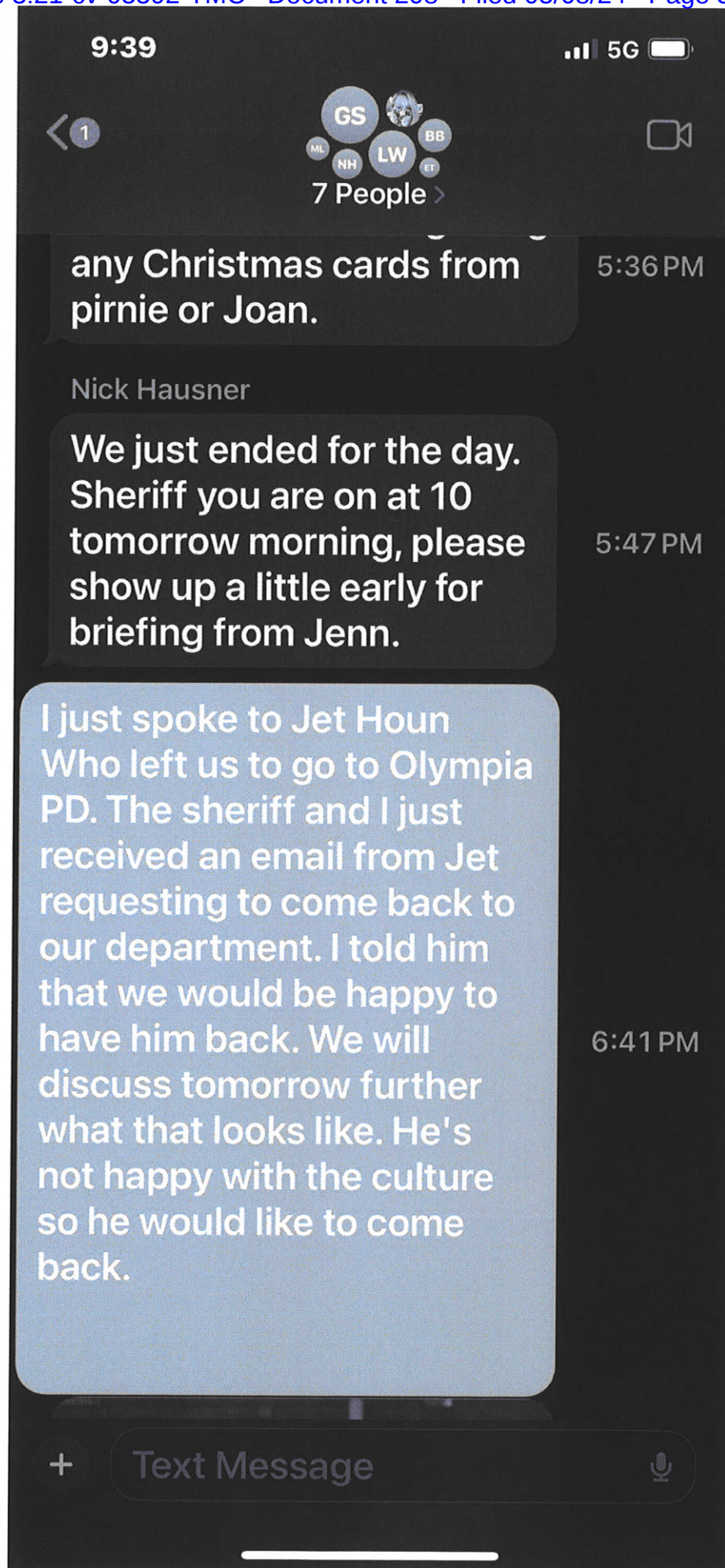


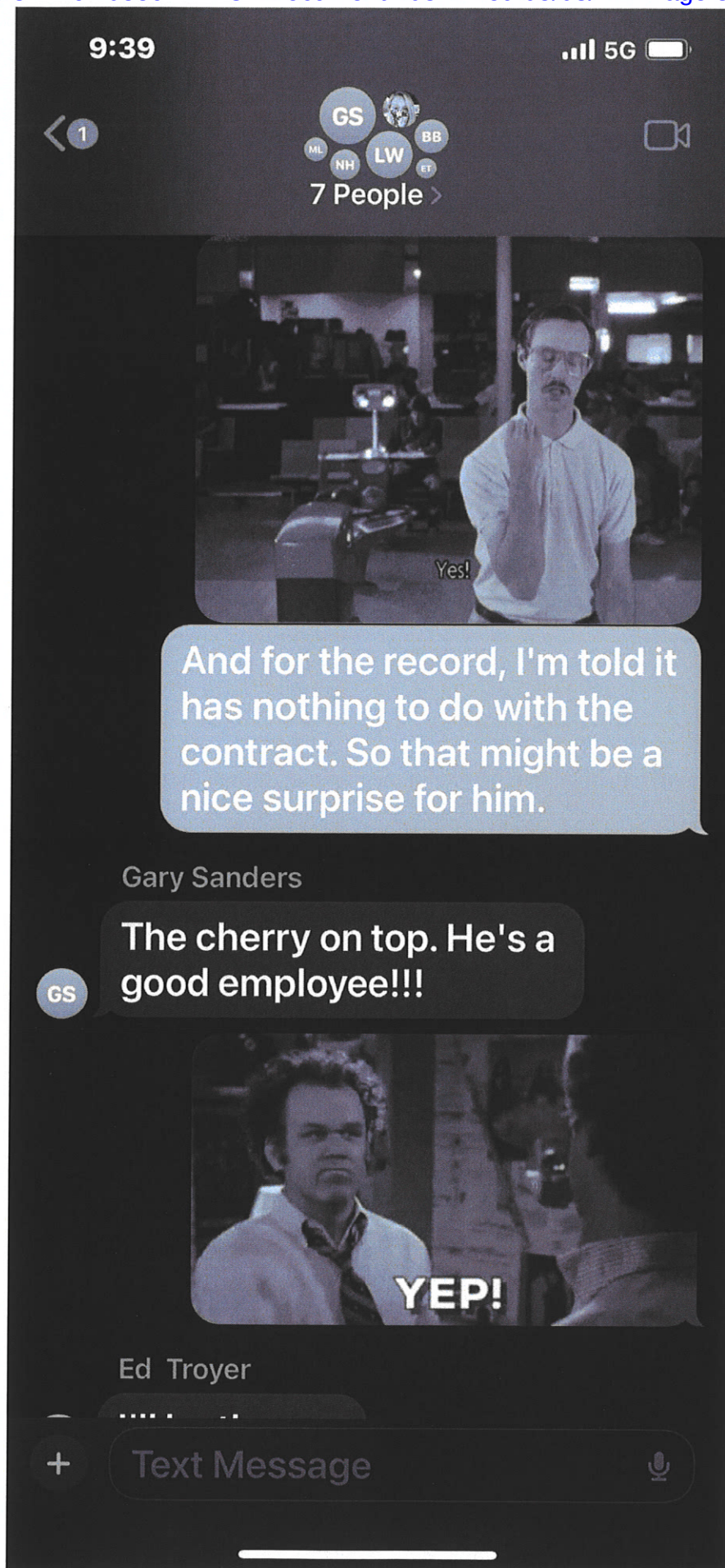


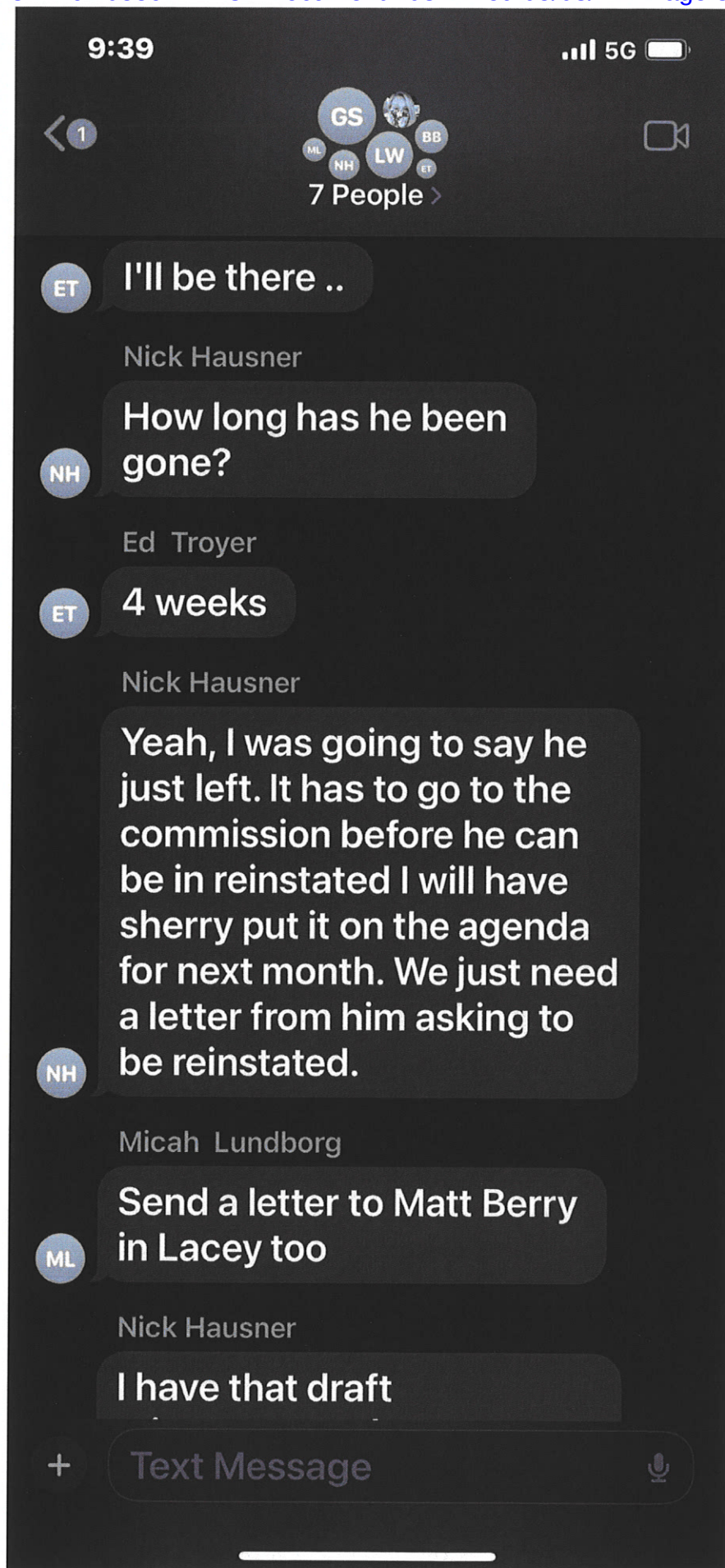


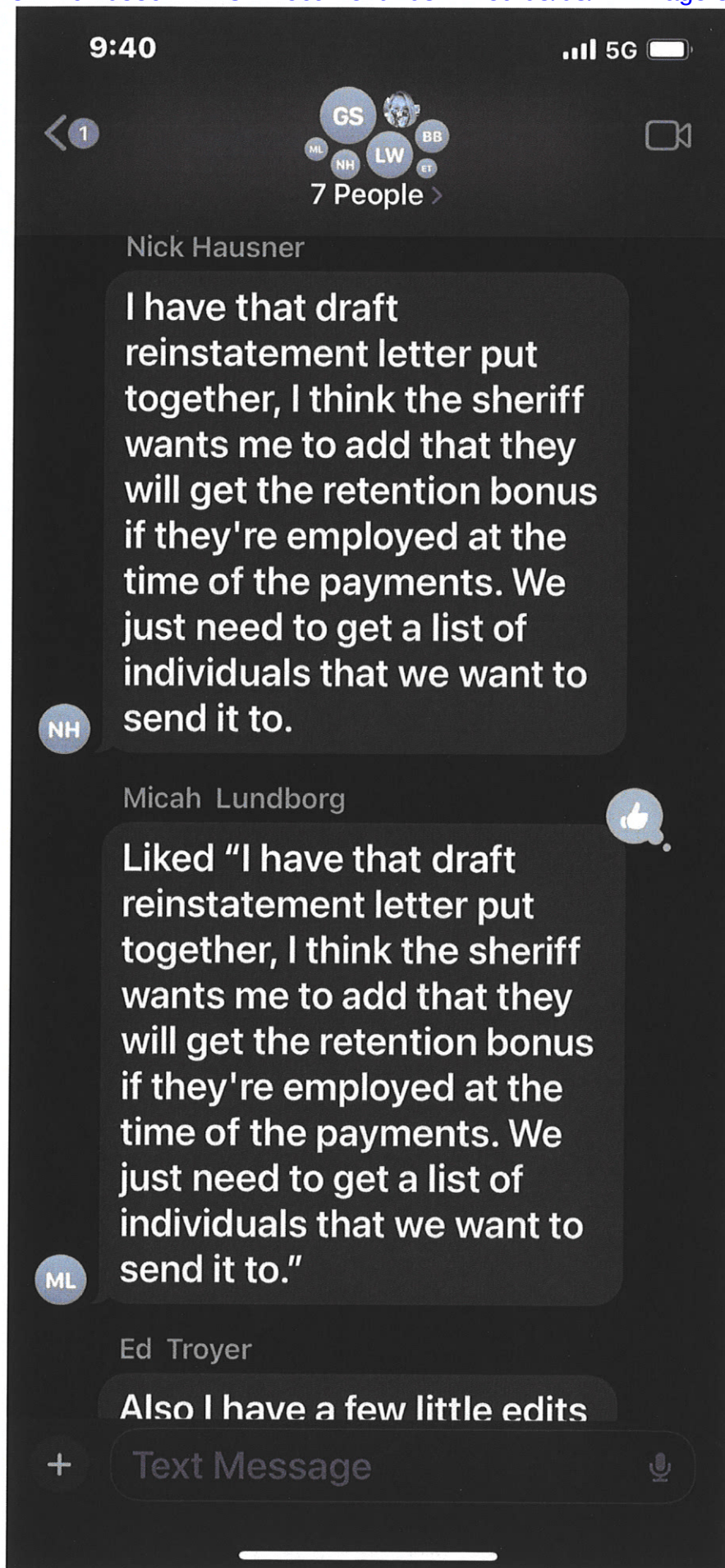


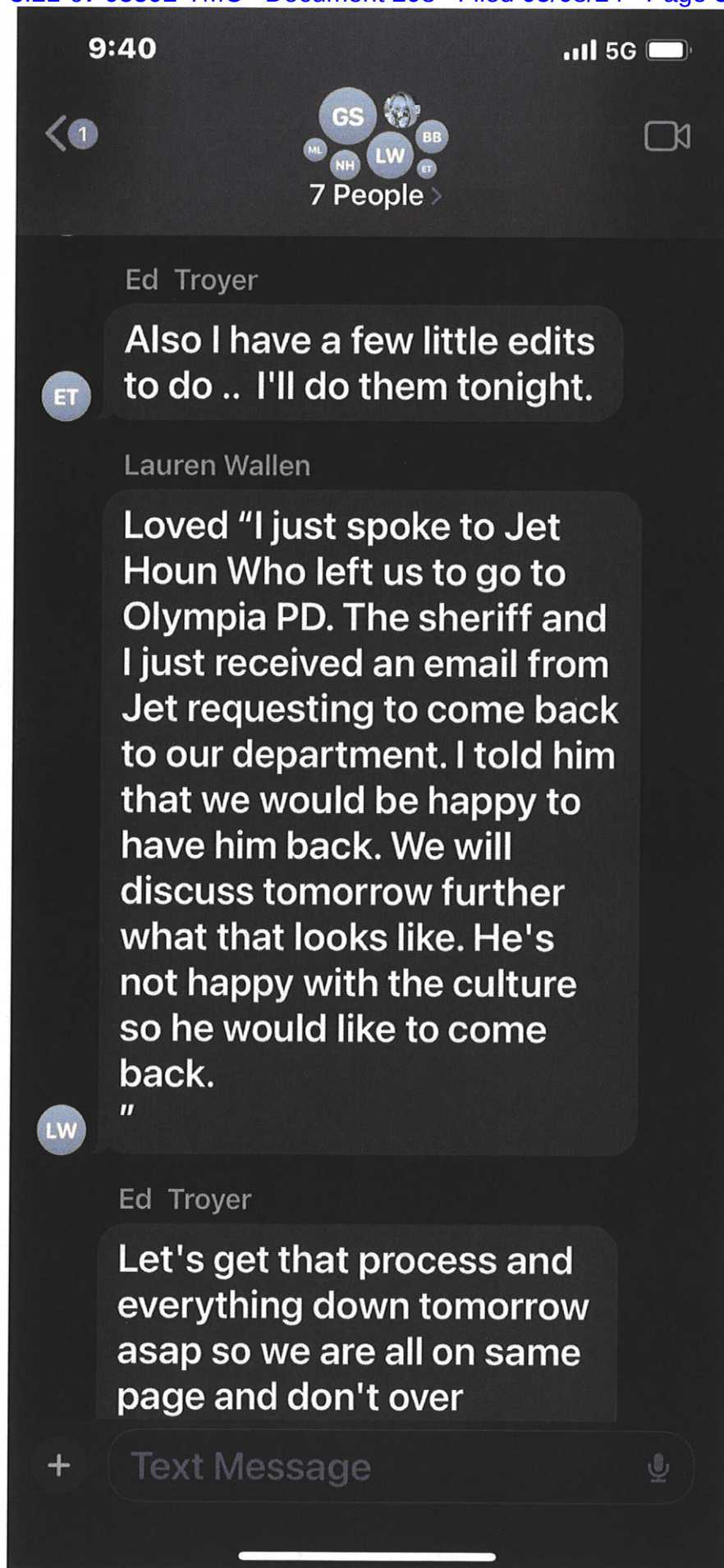


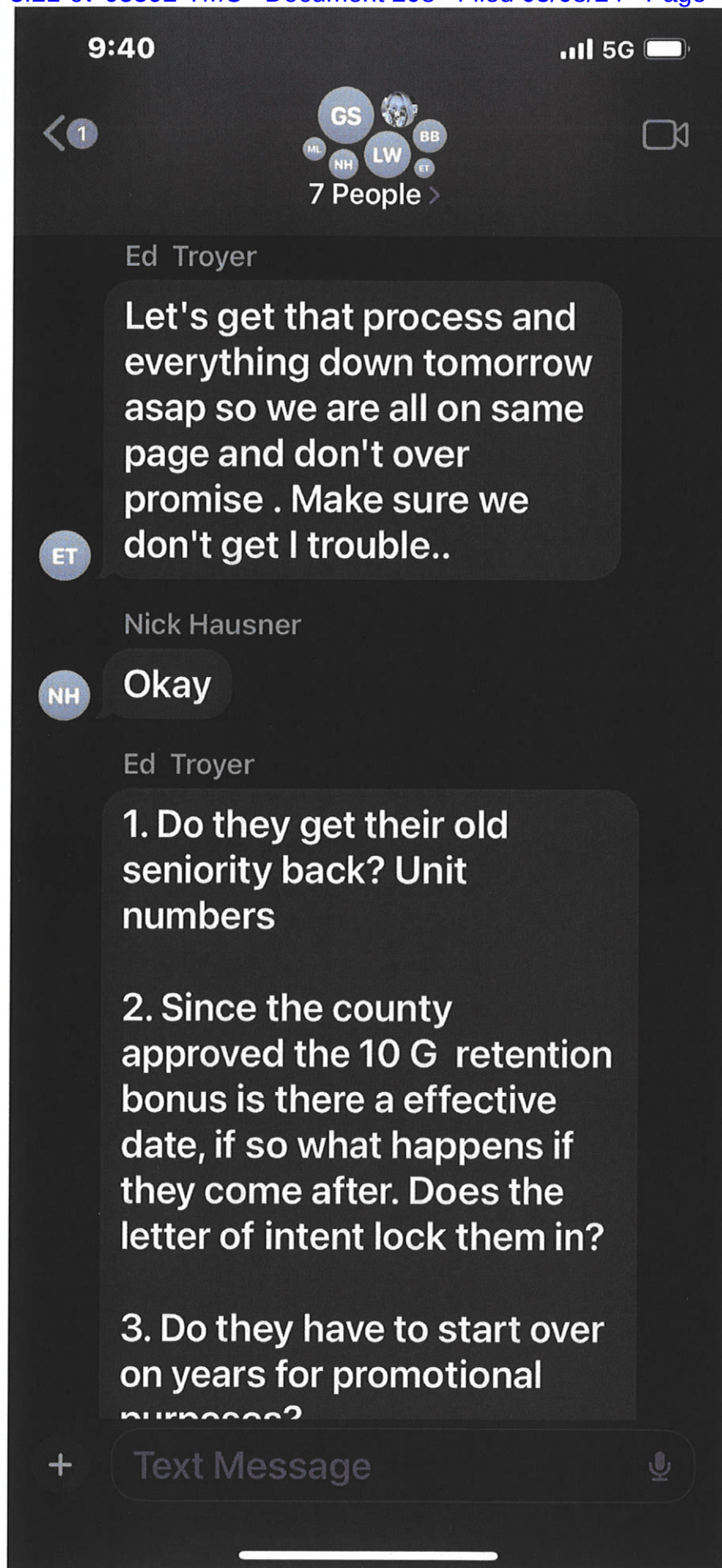


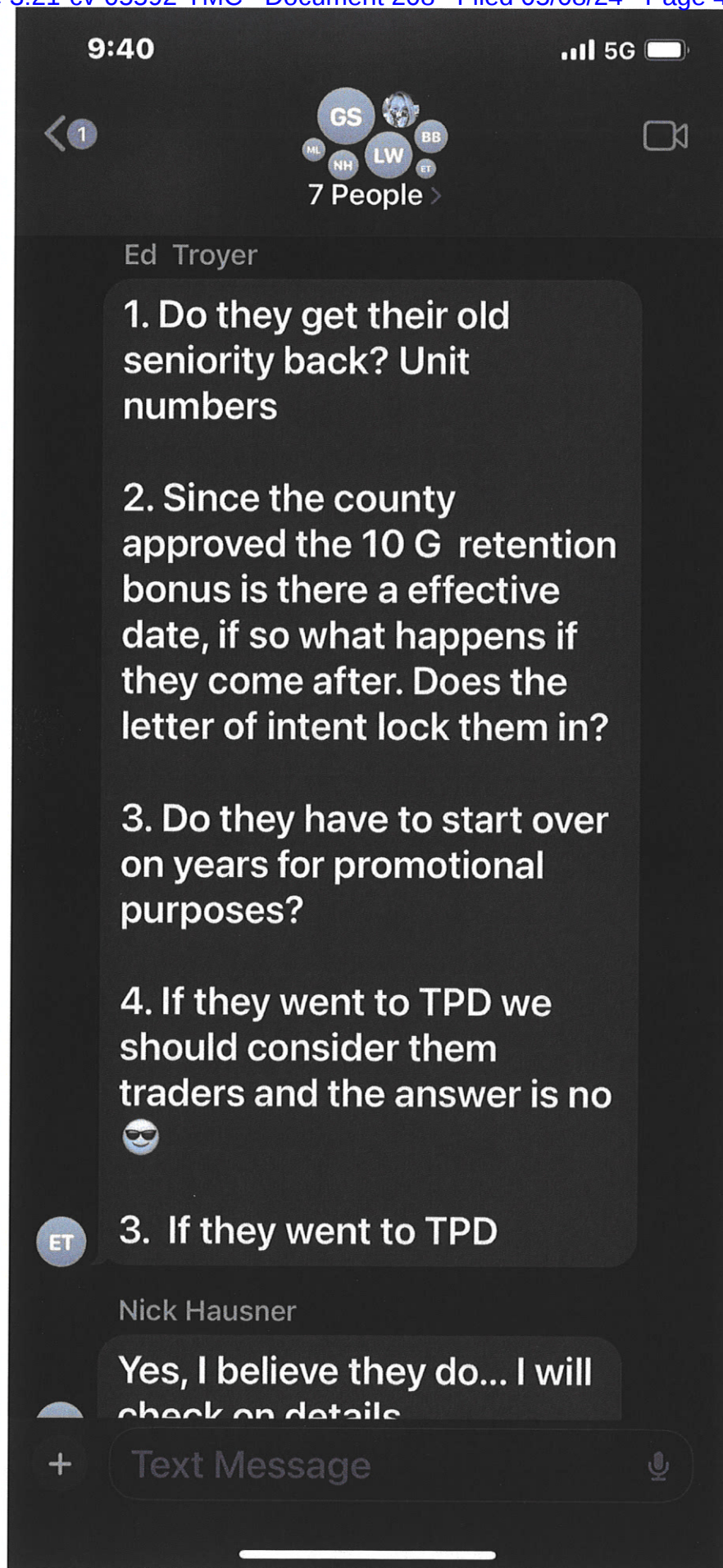


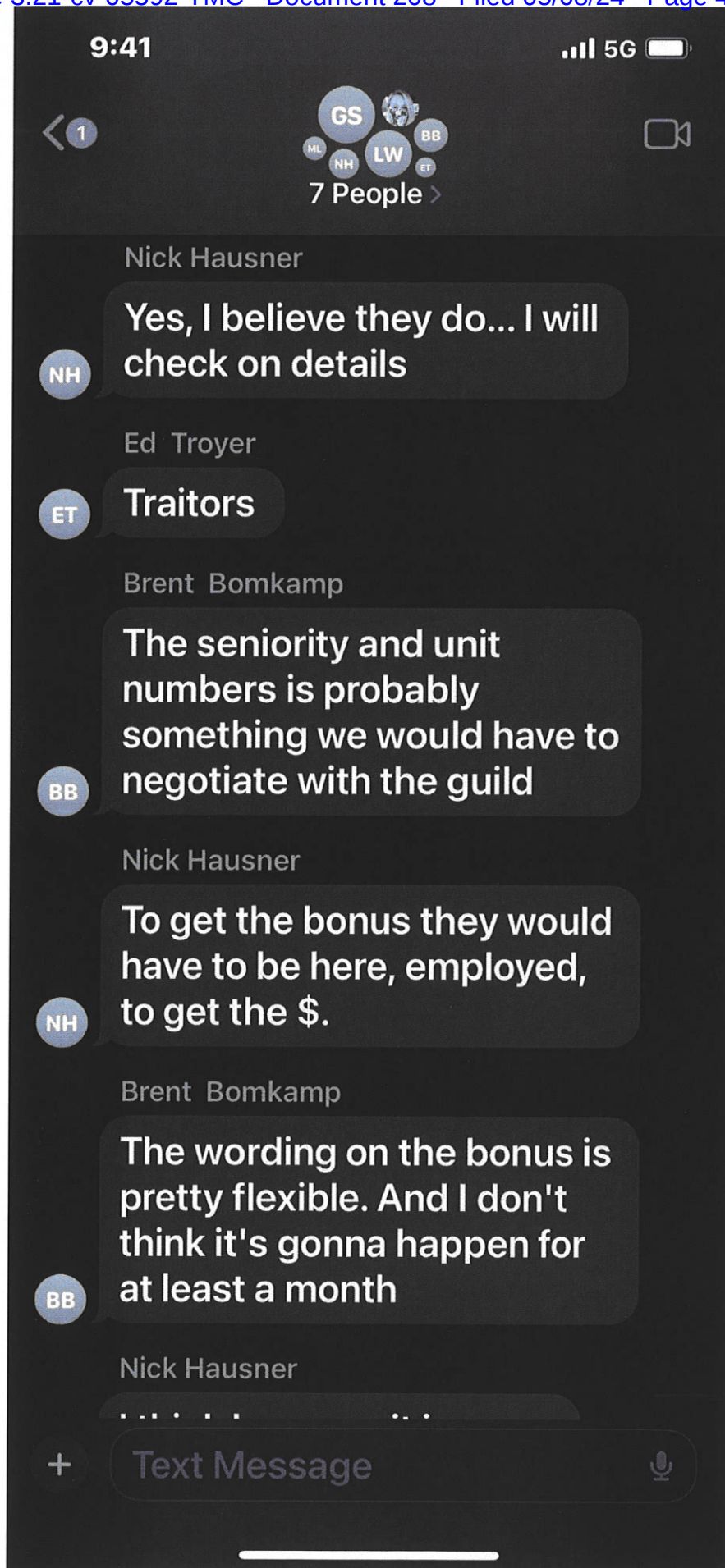


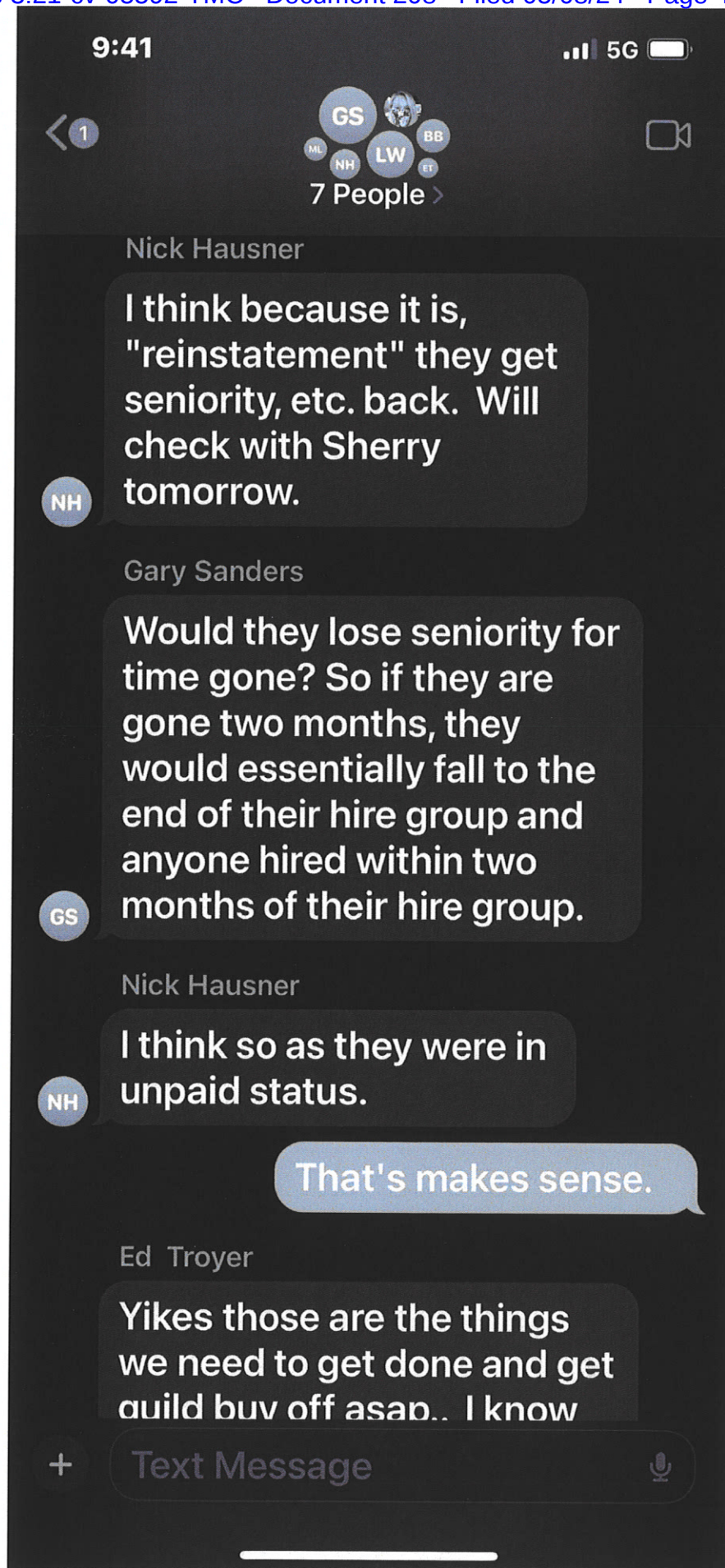


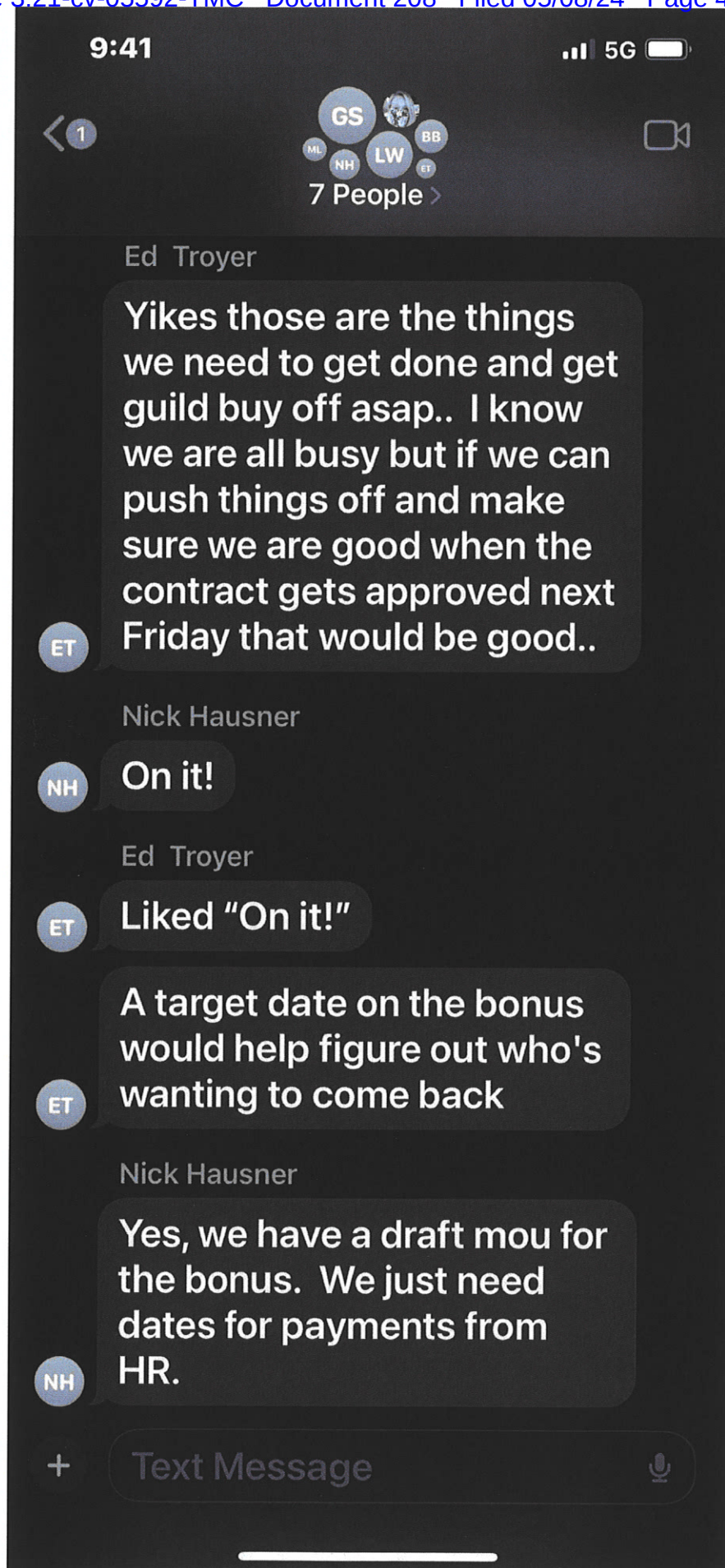


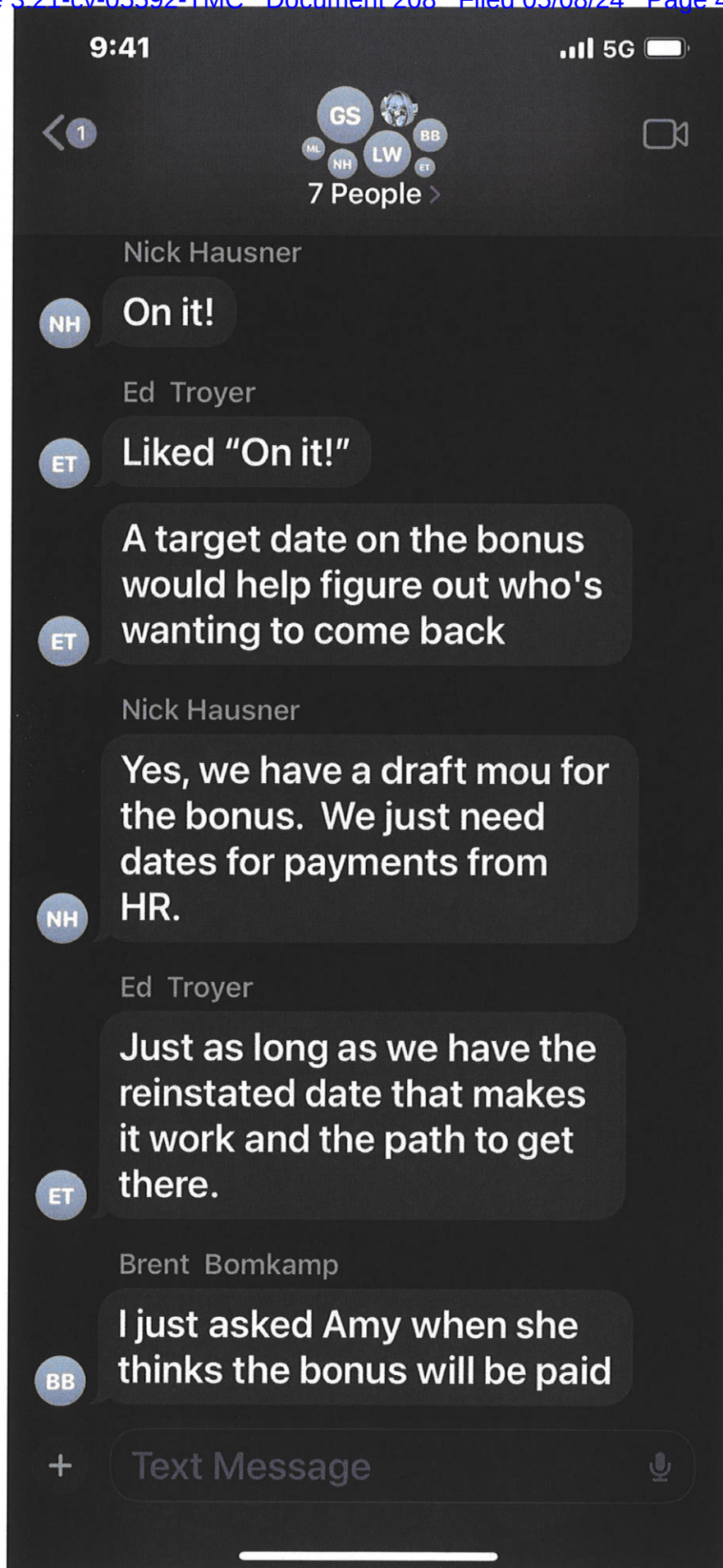


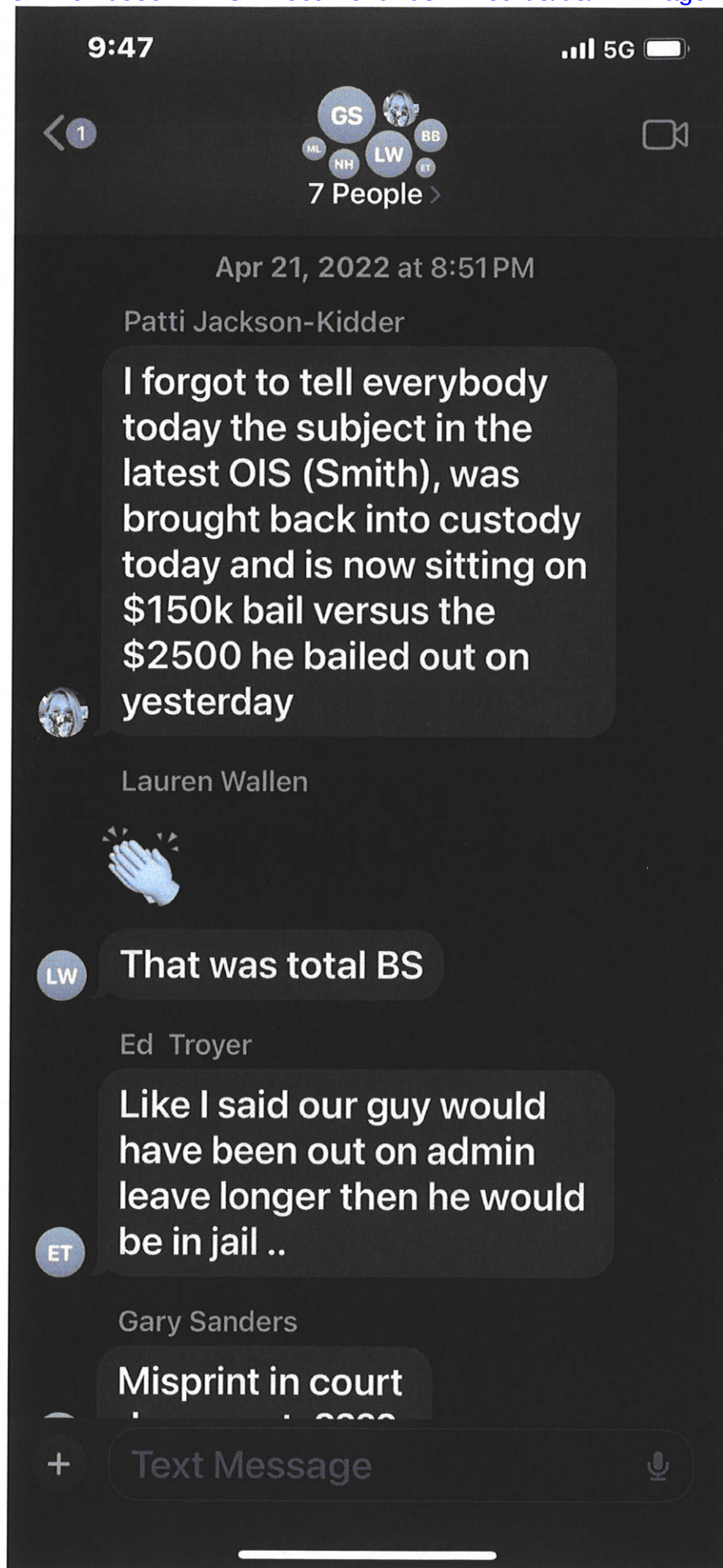












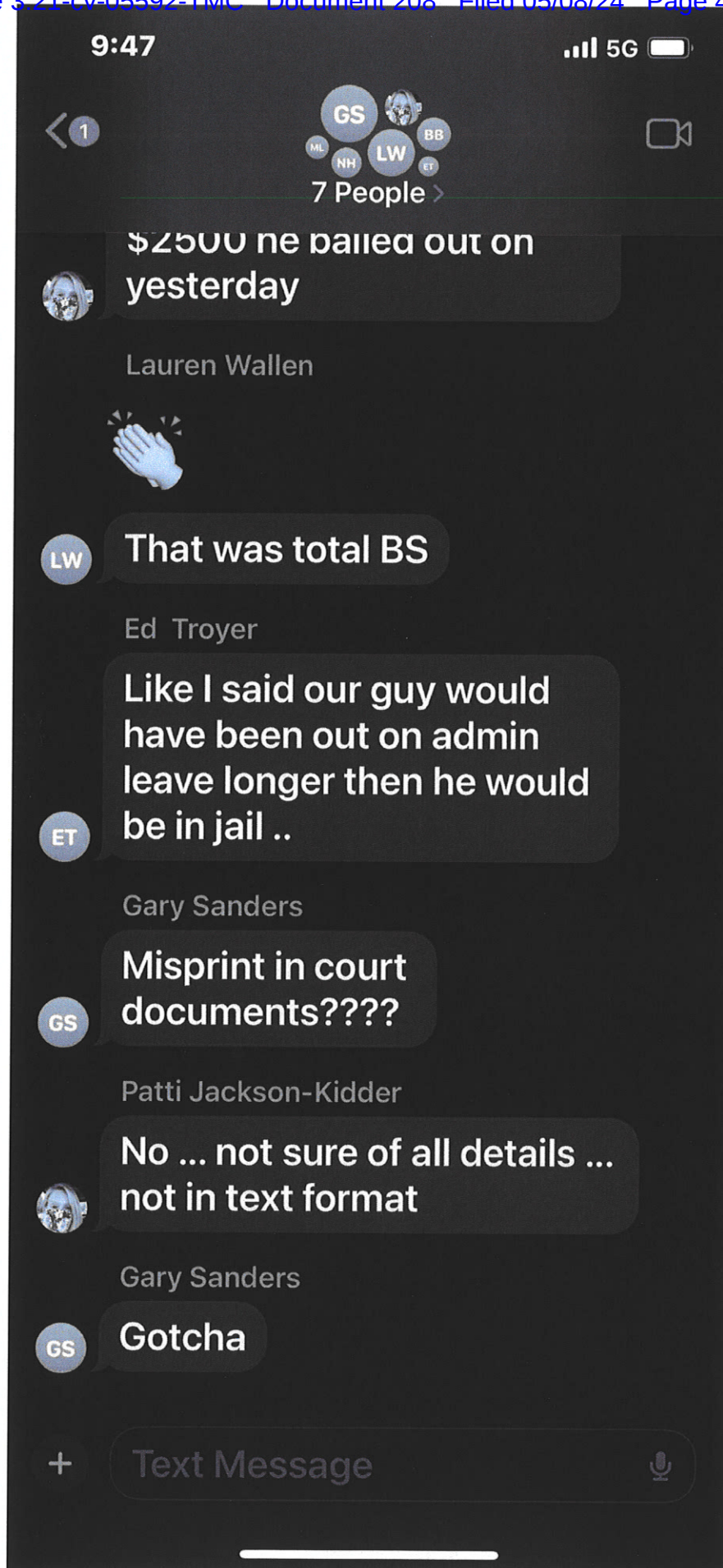


EXHIBIT 4

Subject: [Records Center] Sheriff :: P025140-060823

Body:

Joan -

I received your message, and the most recent installment were some text messages from personal devices, specifically, Hausner's and Bomkamp and an email from Pastor saying he had no messages.

Thanks.

Candice

Wednesday, May 8, 2024 at 17:15:26 Mountain Daylight Time

Subject: Public Record Request P025140 (Text Messages)
Date: Wednesday, May 8, 2024 at 9:02:14 AM Mountain Daylight Time
From: Candice Mauracher
To: Joan Mell
Attachments: image001.jpg, image002.jpg

Joan,

I understand you are having significant issues with GovQA. Per our agreement, I am transmitting all installments via GovQA and will also start transmitting via OneDrive. Please download the records send in OneDrive as they have an expiration date.

As you know, initially I was working on producing text messages that were captured in SMARSH but you asked that I turn my focus to the personal phones which was done beginning with installment #4. The outline for the records is below. Please note I am still working on revieing Chief Roberts' messages and I will then move on to Lundborg and finally I will go back to SMARSH.

FROM GovQA

To date, we have released to you the following installments:

Installment 1:
Text Messages

Date Produced:
09/06/2023 (payment received 09/05/2023)

Pages:
1-272

Installment 2:
Text Messages

Date Produced:

11/27/2023

Pages:

271-445

Installment 3:

Text Messages

Date Produced:

12/01/2023

Pages:

446-730

Installment 4:

**Bomkamp & Hausner Text Messages & Pastor's Response
Regarding Text Messages**

Date Produced:

03/12/2024 (payment received)

Pages:

731-991

Installment 5:

Wallin & Blair Text Messages

Date Produced:

04/15/2024

Pages:

992-1013

Installment 6:

**Sanders Text Messages & Emails from Jackson and Troyer
Regarding Text Messages**

Date Produced:
04/22/2024

Pages:
1014-1022

Installment 7:
Roberts Text Messages

Date Produced:
04/25/2024

Pages:
1023-1028

Installment 8:
Roberts Text Messages

Date Produced:
05/03/2024

Pages:
1029-1093

At this time, we are prepared to produce an installment of records.

If exemptions to disclosure were identified and applied, please see the corresponding exemption log for further information.

These records do not meet the fee threshold; therefore, these records are produced to you at no cost and released to you via the Public Records Request Portal. Please log back into

the "[My Request Center](#)" within the portal to access all released records. Select this request and select "View Files".

Pursuant to RCW 42.56.120(4) and Pierce County Code 2.04.040(H) if you do not inspect or retrieve these records made available to you through the County web portal or file transfer protocol service within 30 calendar days, by **Tuesday, June 4, 2024**, after receiving this notice of the availability of the records, this agency may stop providing further installments of records and close out the request.

It will take additional time for us to review all the files that may contain records responsive to your request and to determine which records or portions of records, if any, are exempt pursuant to law. Accordingly, we estimate that we will be providing the next installment of records to you on or before **Wednesday, May 22, 2024**.

I will notify you if records are available sooner, more time is required to complete the search for responsive records, or if additional clarifying information is needed from you. If you have any questions, believe we have somehow misunderstood your request(s) or wish to clarify your request, please do not hesitate to contact me. To respond via the [Public Records Portal](#), open this request "Details" page and send a "New Message".

Sincerely,
Candice M
Public Records Officer
Pierce County Sheriff

Let me know if you have any issues with downloading any of the records from OneDrive. I have added all 8 installments to the Drive and will send you the invite to the records immediately following this email.

Thank you!



Candice Mauracher

Public Records Officer, CPRO | Legal Assistant IV

253-798-4800

Pierce County Sheriff's Department

SHRpublicrecords@piercecounitywa.gov

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EXHIBIT 5

Candice Mauracher

From: Ed Troyer
Sent: Monday, January 8, 2024 3:15 PM
To: Candice Mauracher
Subject: RE: Public Records Request (P024880)

I do not have any.

From: Candice Mauracher <candice.mauracher@piercecounitywa.gov>
Sent: Monday, January 8, 2024 1:44 PM
To: Patti Jackson <patti.jackson@piercecounitywa.gov>; Gary Sanders <gary.sanders@piercecounitywa.gov>; Kevin Roberts <kevin.roberts@piercecounitywa.gov>; Ed Troyer <ed.troyer@piercecounitywa.gov>
Subject: RE: Public Records Request (P024880)

I have not received the text messages from your personal phones as requested. I sent a reminder on 11/30/2023. I still need messages from you all from your personal phones. Please get me screen shots of the messages by Friday, January 19, 2024. I would like to close this request by the end of the month. Thanks!



Candice Mauracher

Public Records Officer, CPRO | Legal Assistant IV
 253-798-4800
 Pierce County Sheriff's Department
SHRpublicrecords@piercecounitywa.gov

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From: Candice Mauracher
Sent: Monday, June 12, 2023 2:49 PM
To: Brent Bomkamp <brent.bomkamp@piercecounitywa.gov>; Nick Hausner <nick.hausner@piercecounitywa.gov>; Micah Lundborg <micah.lundborg@piercecounitywa.gov>; Patti Jackson <patti.jackson@piercecounitywa.gov>; Gary Sanders <gary.sanders@piercecounitywa.gov>; Kevin Roberts <kevin.roberts@piercecounitywa.gov>; Lauren Wallin <lauren.wallin@piercecounitywa.gov>
Subject: Public Records Request (P024880)
Importance: High

I have received the below request:

"Make available for public inspection all group text messages among Paul Pastor, Brent Bomkamp, Micah Lundborg, Nick Hausner, Patti Jackson, Ed Troyer, Gary Sanders, Kevin Roberts, Lauren Wallin, or Mike

Blair on work or personal technologies that relate to the conduct of government or the performance of any governmental or proprietary function from 2019 to the present date. Please provide affidavits per Nissen case for searches of private technologies. This request is for all group chats or conversations among all or some of the above listed employees.”

Requestor: Joan Mell
Email: joan@3brancheslaw.com
Phone #: 253.566.2510

I need you to all check your work cell phones for any and group text messages as outline herein above. Additionally, please check your private cell phones for group messages regarding the same as outlined herein above. The end date should be May 24, 2023.

I will need to hear back from you all no later than Friday, June 23, 2023. Thank you!



Candice Mauracher

Public Records Officer, CPRO | Legal Assistant IV
253-798-4800
Pierce County Sheriff's Department
SHRpublicrecords@piercecountywa.gov

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Candice Mauracher

From: Patti Jackson
Sent: Monday, January 8, 2024 1:51 PM
To: Candice Mauracher; Gary Sanders; Kevin Roberts; Ed Troyer
Subject: RE: Public Records Request (P024880)

I checked and did not have any work related text saved on my personal phone so I did not have to send to you. I do know that I'm supposed to forward everything to my work related phone from that point forward.

Thank you - Pj



Chief Jackson
 Pierce County Sheriff Department | Patrol Operations
 Phone 253-798-2299

From: Candice Mauracher <candice.mauracher@piercecountywa.gov>
Sent: Monday, January 8, 2024 1:44 PM
To: Patti Jackson <patti.jackson@piercecountywa.gov>; Gary Sanders <gary.sanders@piercecountywa.gov>; Kevin Roberts <kevin.roberts@piercecountywa.gov>; Ed Troyer <ed.troyer@piercecountywa.gov>
Subject: RE: Public Records Request (P024880)

I have not received the text messages from your personal phones as requested. I sent a reminder on 11/30/2023. I still need messages from you all from your personal phones. Please get me screen shots of the messages by Friday, January 19, 2024. I would like to close this request by the end of the month. Thanks!



Candice Mauracher

Public Records Officer, CPRO | Legal Assistant IV
 253-798-4800
 Pierce County Sheriff's Department
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From: Candice Mauracher
Sent: Monday, June 12, 2023 2:49 PM
To: Brent Bomkamp <brent.bomkamp@piercecountywa.gov>; Nick Hausner <nick.hausner@piercecountywa.gov>; Micah Lundborg <micah.lundborg@piercecountywa.gov>; Patti Jackson <patti.jackson@piercecountywa.gov>; Gary Sanders <gary.sanders@piercecountywa.gov>; Kevin Roberts <kevin.roberts@piercecountywa.gov>; Lauren Wallin <lauren.wallin@piercecountywa.gov>
Subject: Public Records Request (P024880)
Importance: High

I have received the below request:

“Make available for public inspection all group text messages among Paul Pastor, Brent Bomkamp, Micah Lundborg, Nick Hausner, Patti Jackson, Ed Troyer, Gary Sanders, Kevin Roberts, Lauren Wallin, or Mike Blair on work or personal technologies that relate to the conduct of government or the performance of any governmental or proprietary function from 2019 to the present date. Please provide affidavits per Nissen case for searches of private technologies. This request is for all group chats or conversations among all or some of the above listed employees.”

Requestor: Joan Mell
Email: joan@3brancheslaw.com
Phone #: 253.566.2510

I need you to all check your work cell phones for any and group text messages as outline herein above. Additionally, please check your private cell phones for group messages regarding the same as outlined herein above. The end date should be May 24, 2023.

I will need to hear back from you all no later than Friday, June 23, 2023. Thank you!



Candice Mauracher

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Candice Mauracher

From: [REDACTED] Paul Pastor <04pastor@gmail.com>
Sent: Monday, October 30, 2023 12:51 PM
To: Candice Mauracher
Subject: Re: Public Record Request P024880

Ms. Mauracher:
I have nothing. I intentionally did not keep anything of the sort.
Thank you for seeing to this.

Paul Pastor

On Wed, Oct 25, 2023 at 1:29 PM Candice Mauracher <candice.mauracher@piercecountywa.gov> wrote:

Good afternoon!

We have received a public record request from Attorney Joan Mell asking for the following records:

Make available for public inspection all group text messages among Paul Pastor, Brent Bomkamp, Micah Lundborg, Nick Hausner, Patti Jackson, Ed Troyer, Gary Sanders, Kevin Roberts, Lauren Wallin, or Mike Blair on work or personal technologies that relate to the conduct of government or the performance of any governmental or proprietary function from 2019 to the present date. Please provide affidavits per Nissen case for searches of private technologies. This request is for all group chats or conversations among all or some of the above listed employees.

Can you please let me know if you have any text message records as requested hereinabove by the close of business Wednesday, November 1, 2023? The timeframe is 01/01/2019 – 05/24/2023. If you have records I will need copies of the text messages ASAP following November 1, 2023.

Thank you and I hope you are doing well!



Candice Mauracher

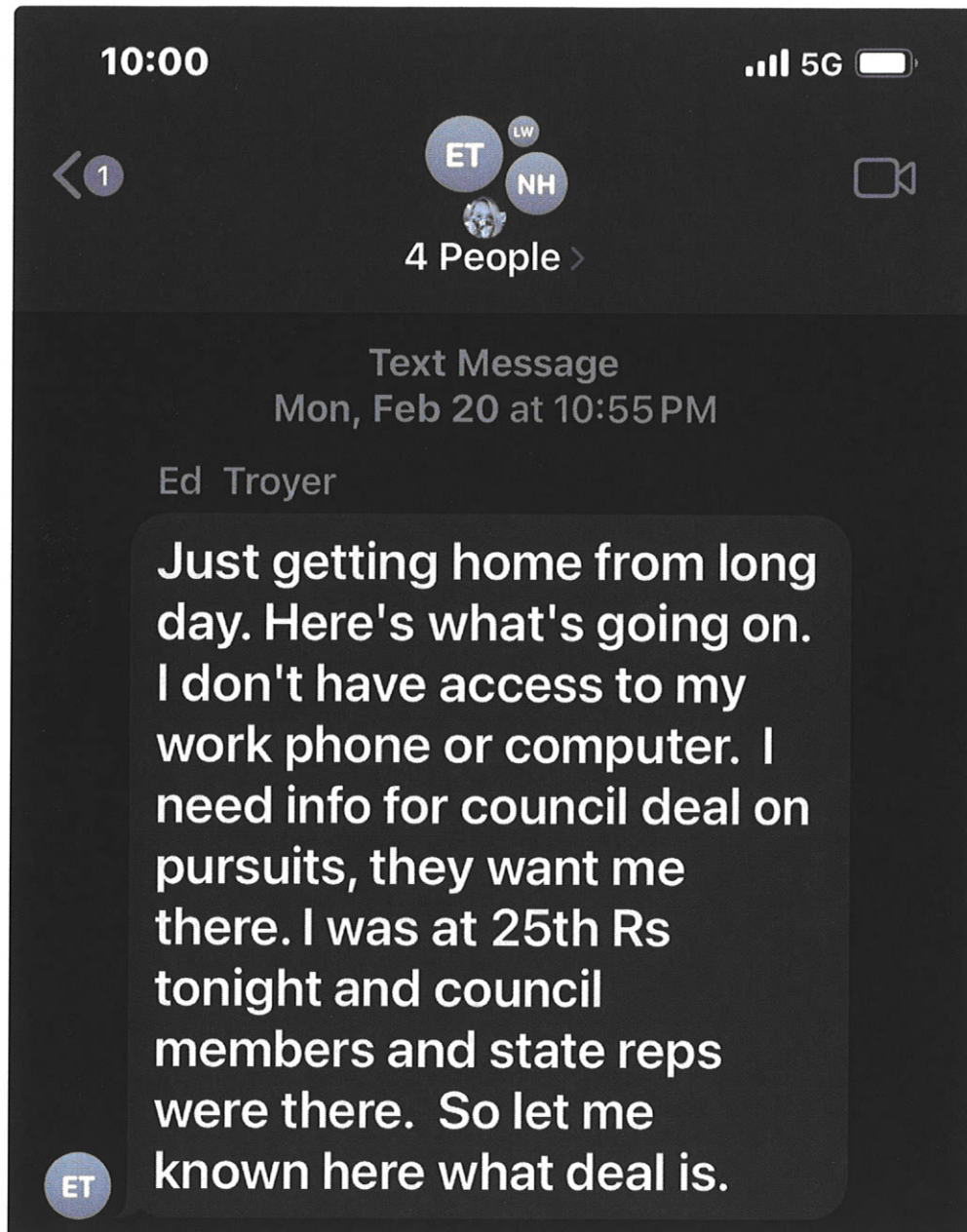
Public Records Officer, CPRO | Legal Assistant IV

253-798-4800

Pierce County Sheriff's Department

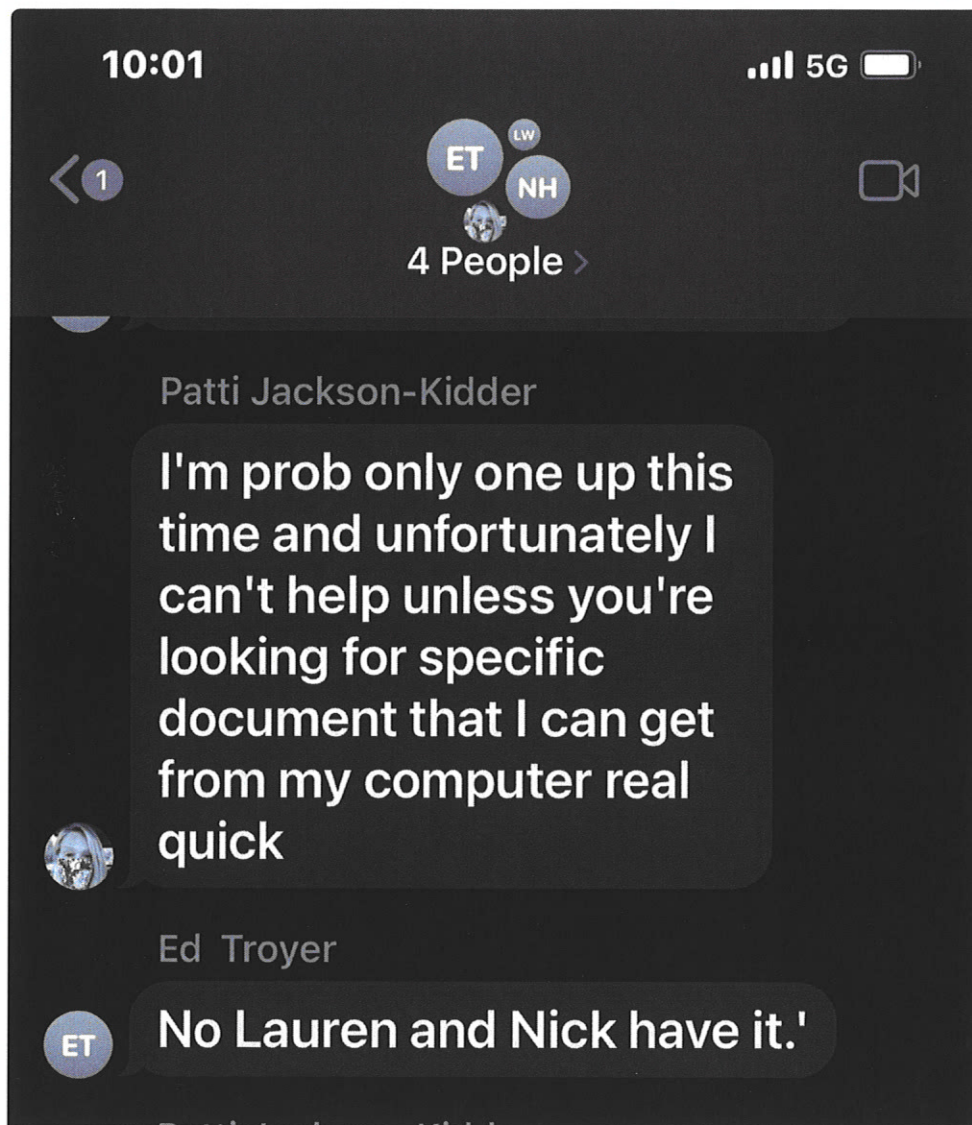
SHRpublicrecords@piercecountywa.gov

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PCSD P025140 Mell

001070



PCSD P025140 Mell

001072

Nick Hausner

Council meeting is late tomorrow. We will get you up to speed tomorrow. Lauren has been working with them cleaning up data for their presentation. I have an afternoon appointment, so can't go to council tomorrow. I think we have or will have a copy of the presentation tomorrow. Not cool with the surprise presentation and invite....

NH

Ed Troyer

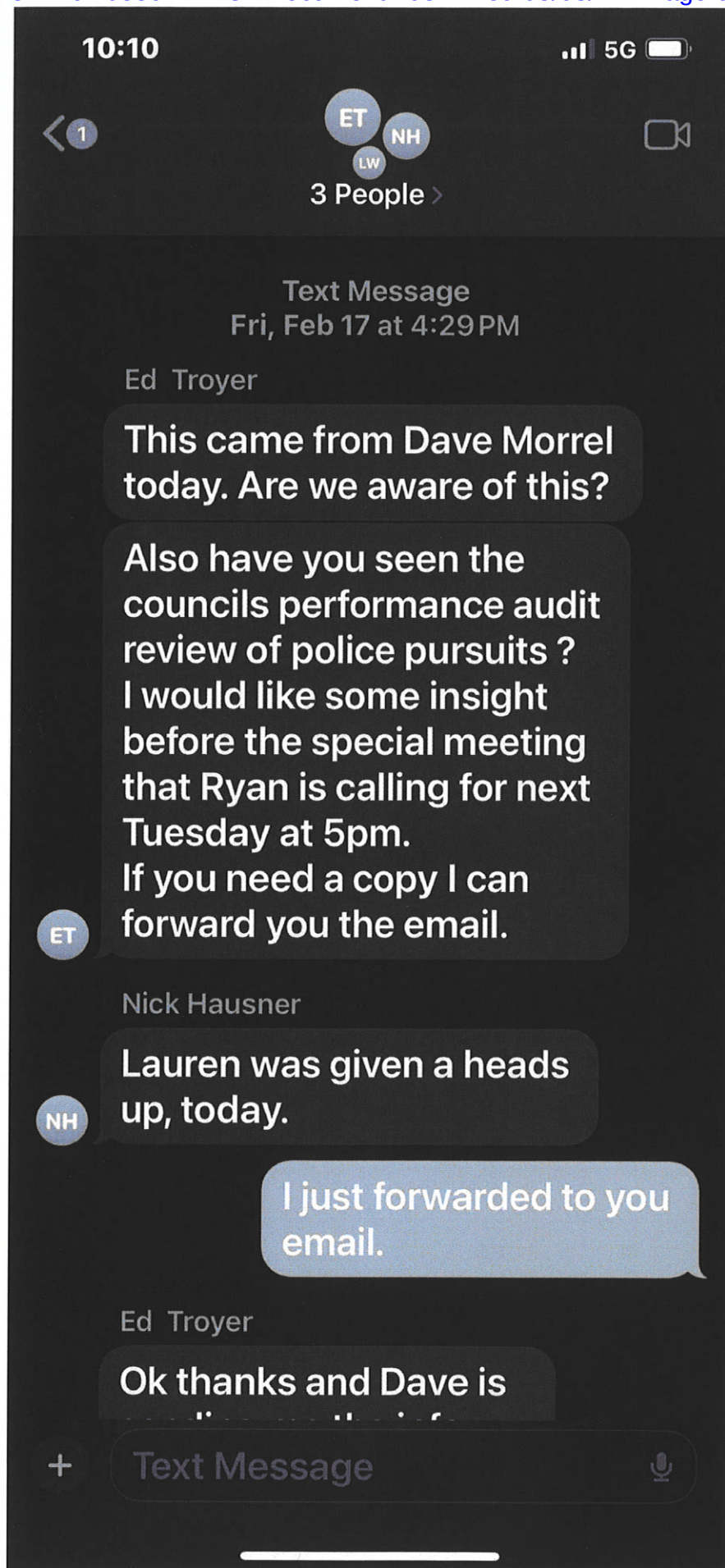
Ok we will figure it out thanks 🙏

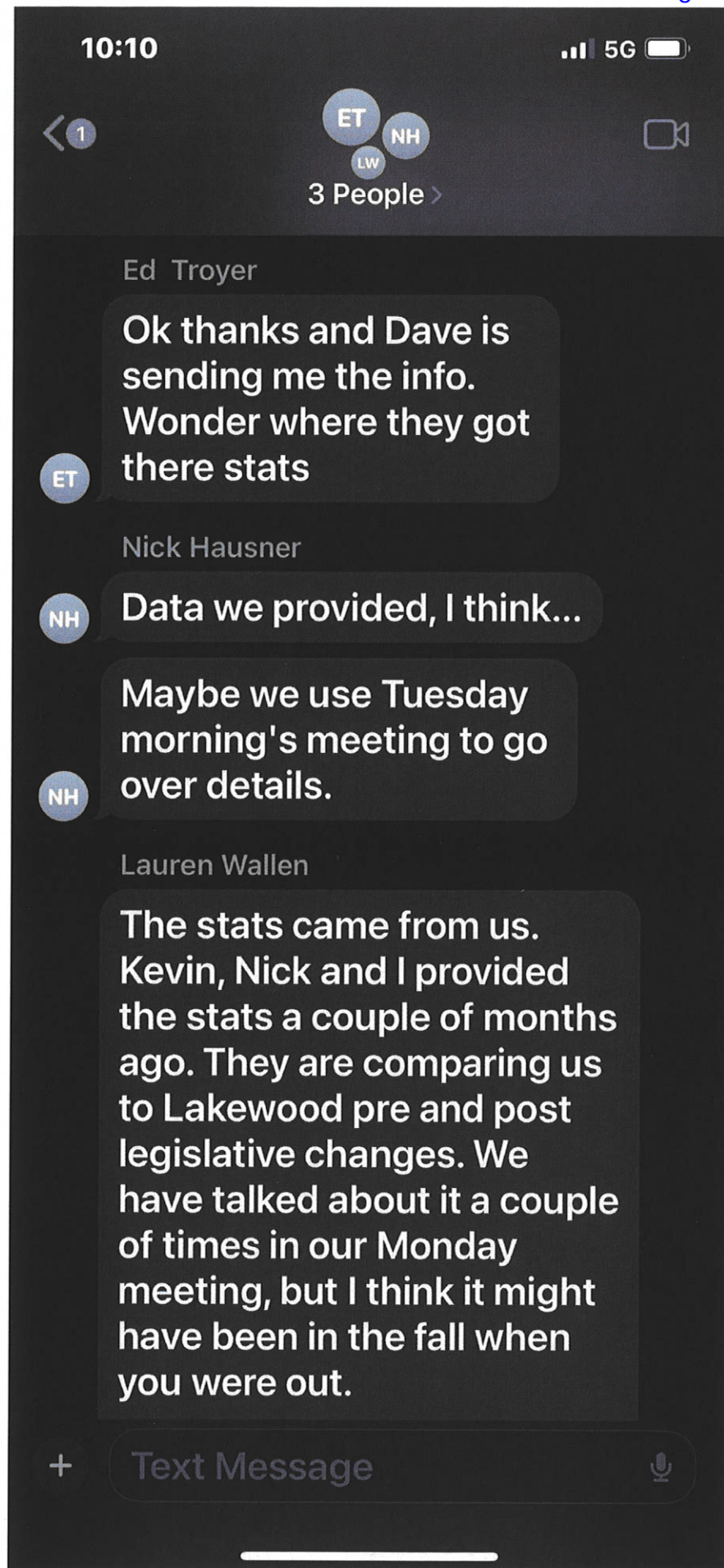
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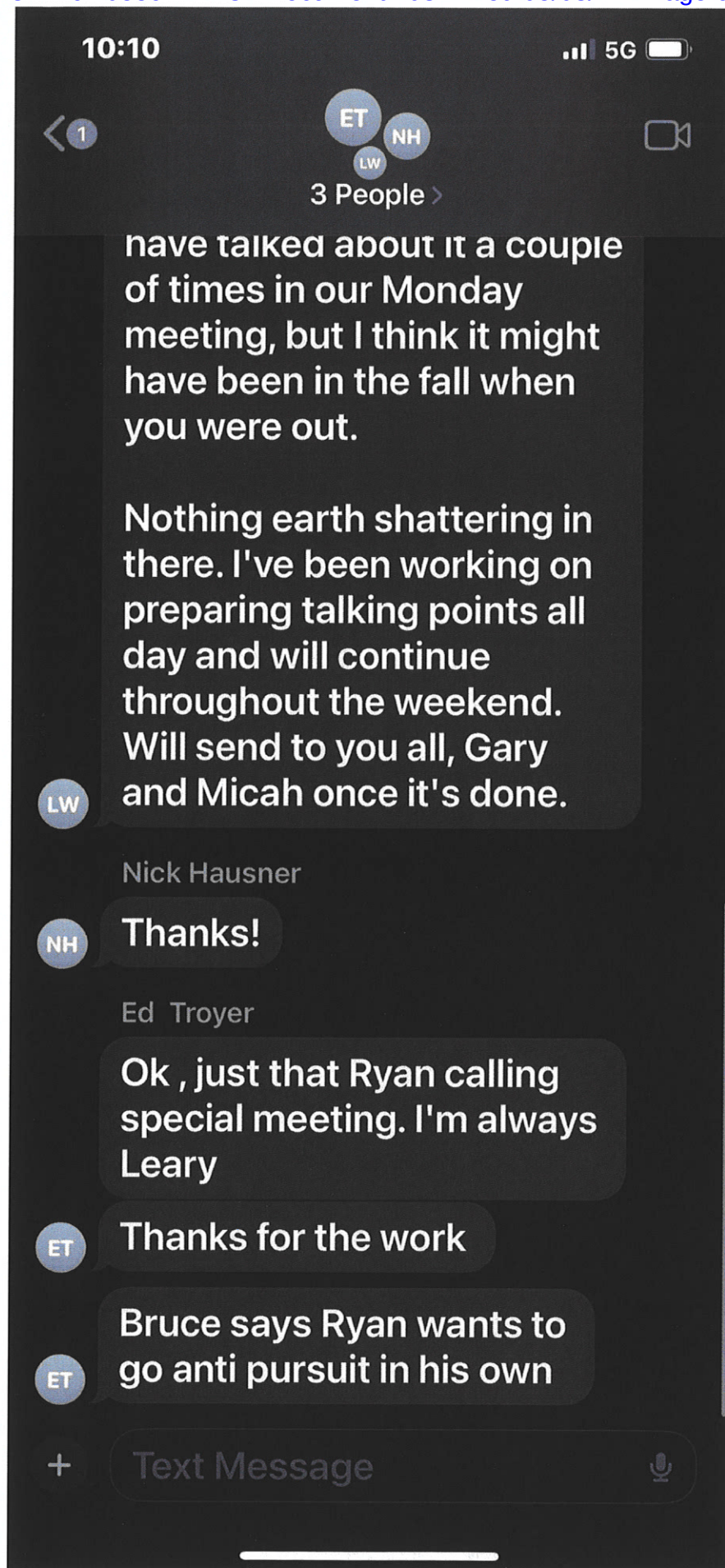
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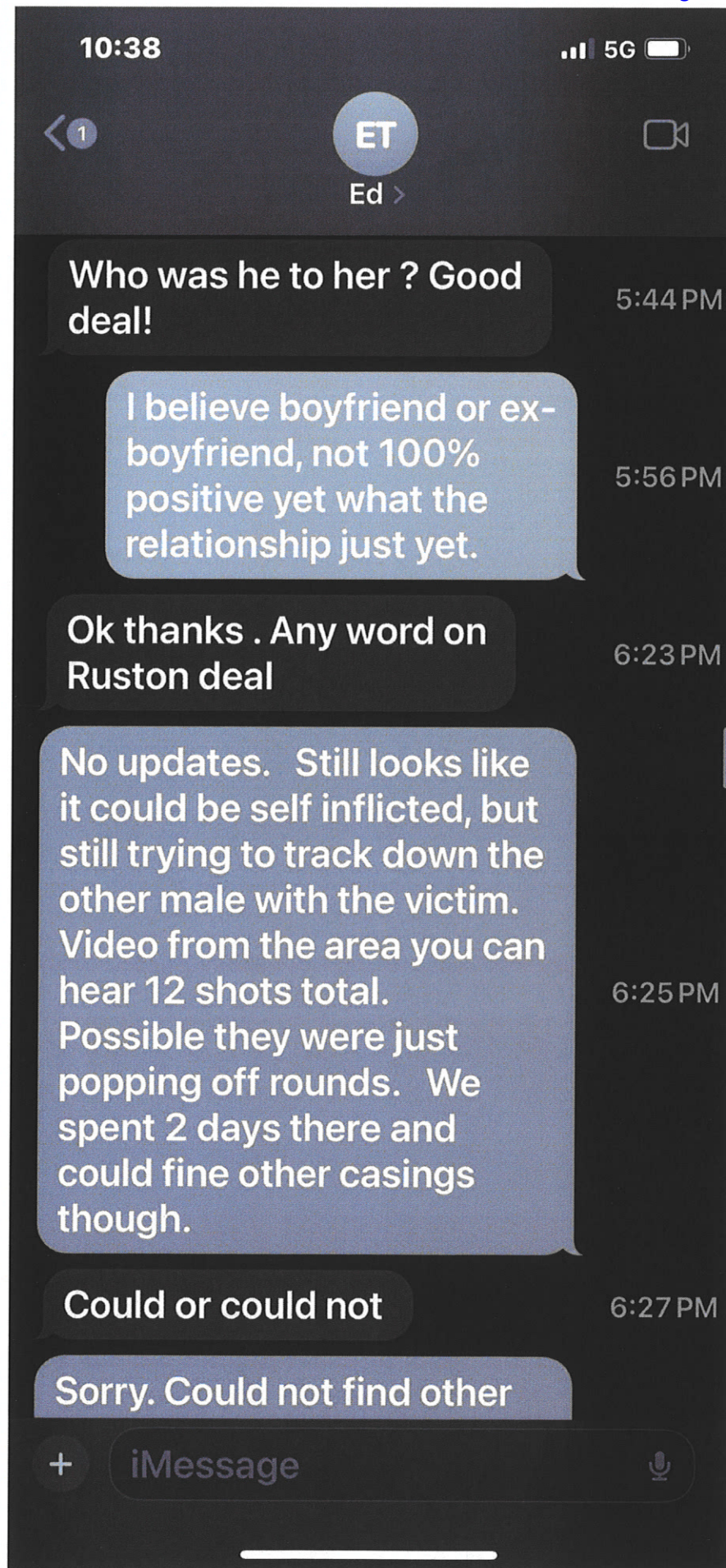
Text Message

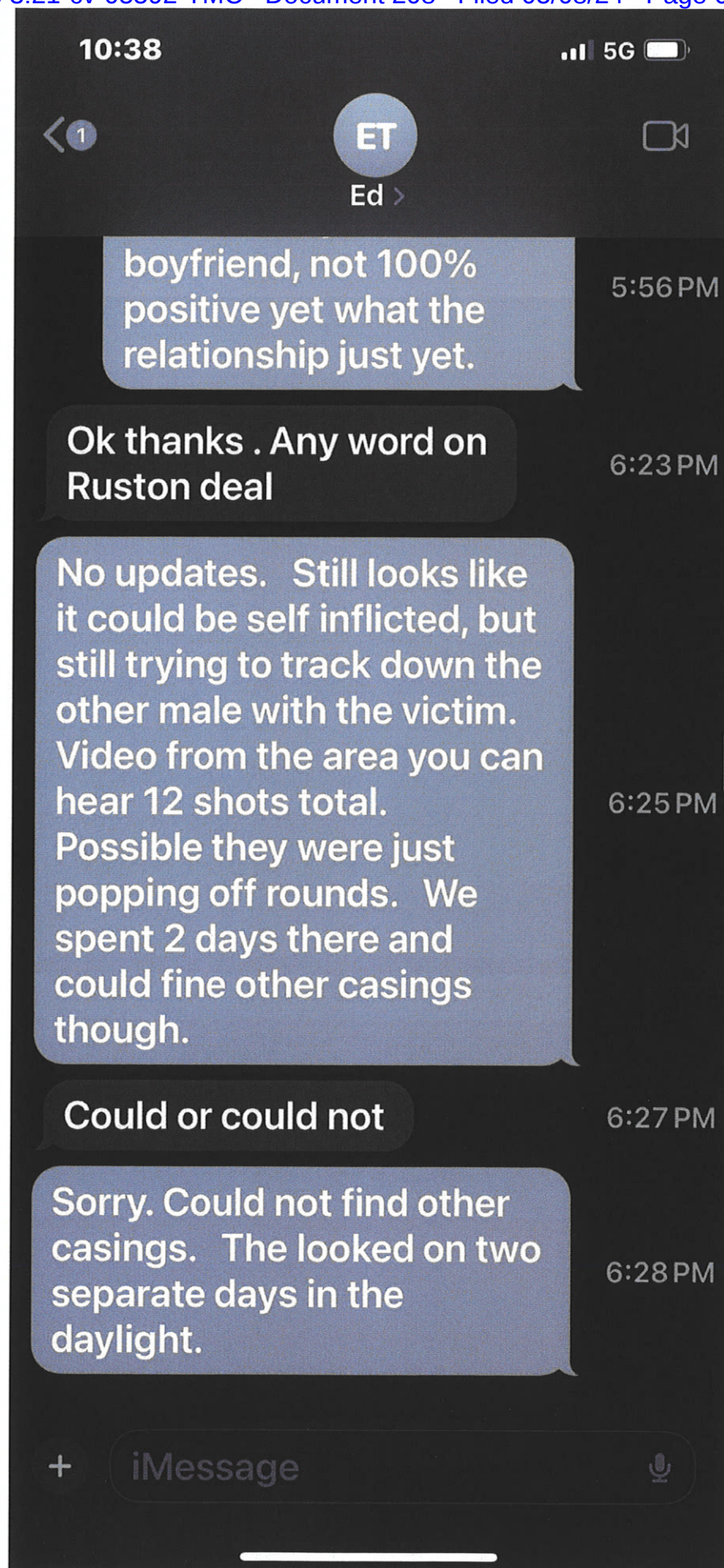


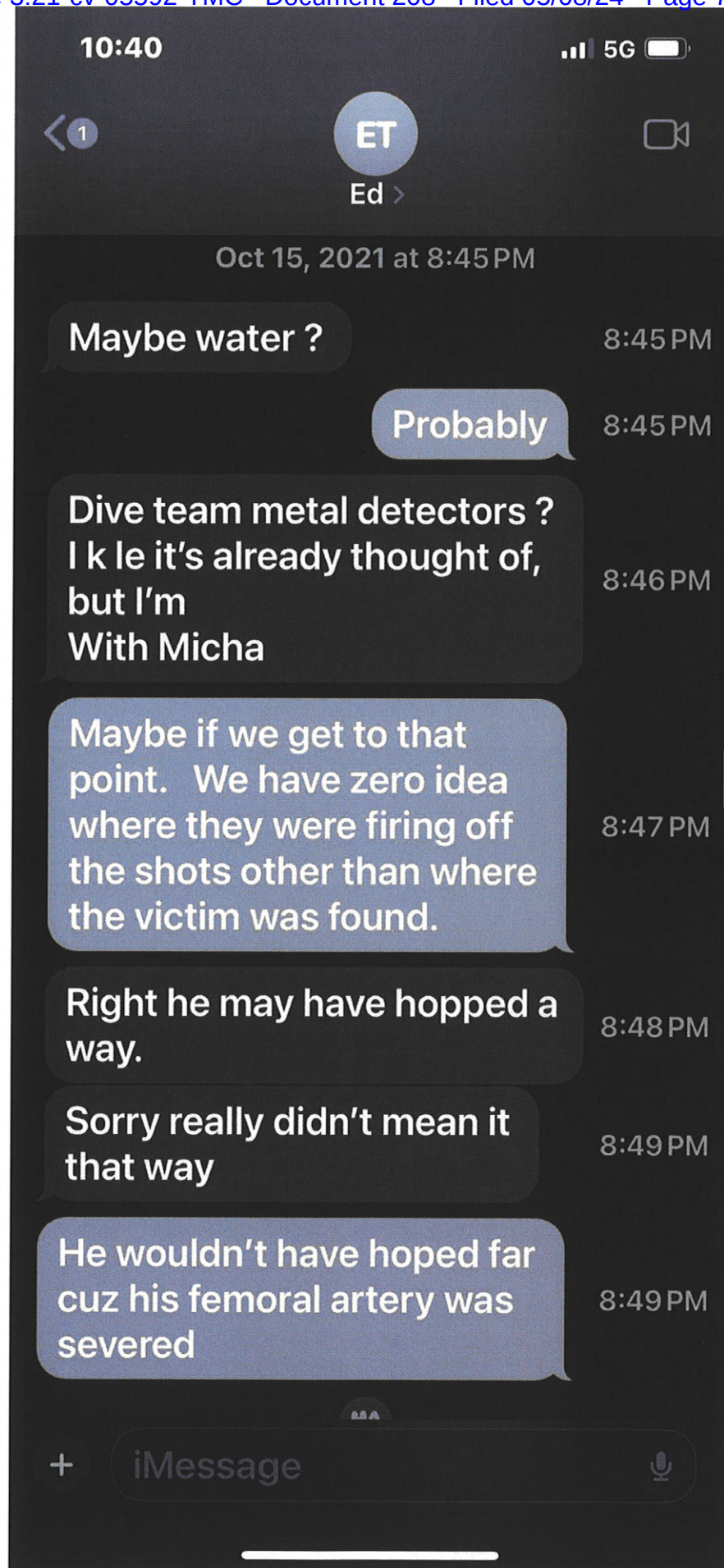


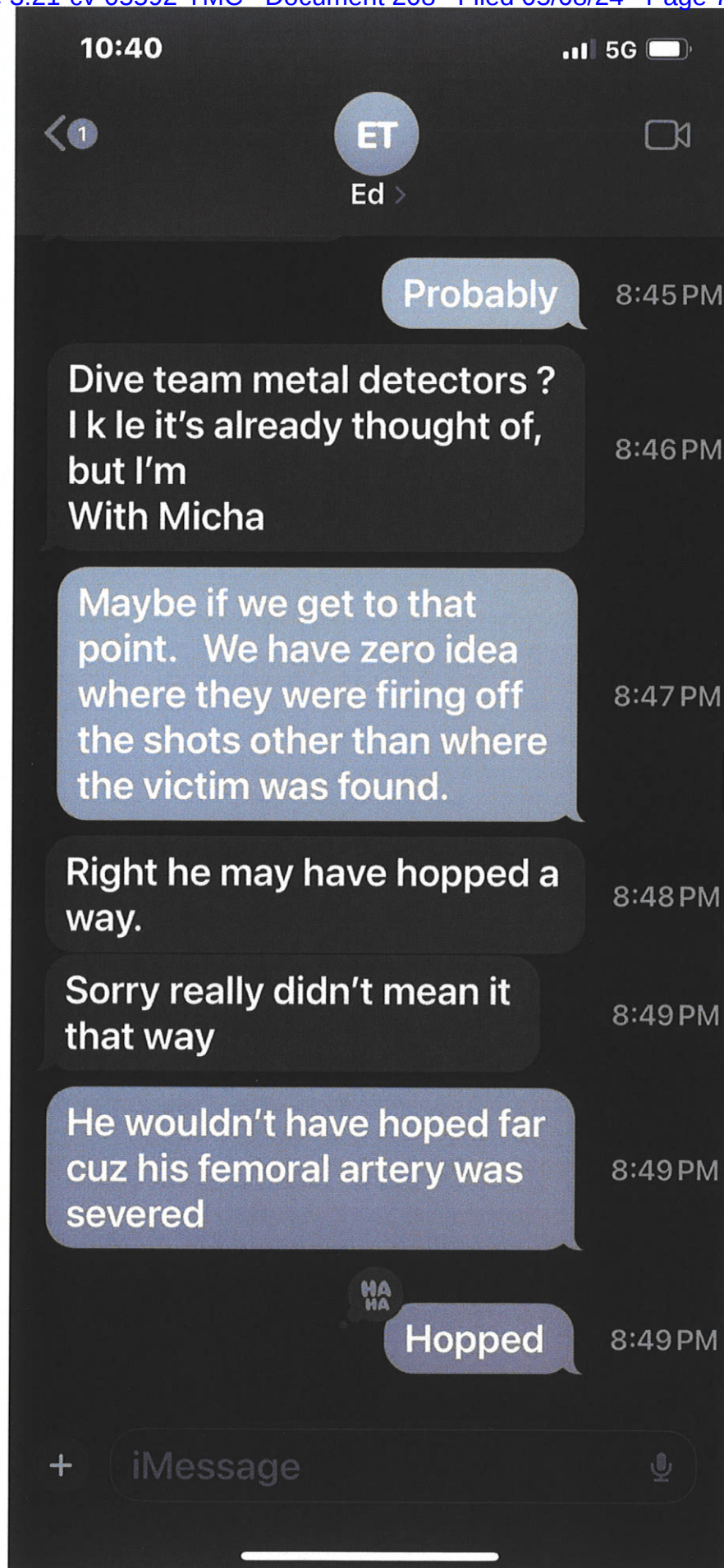


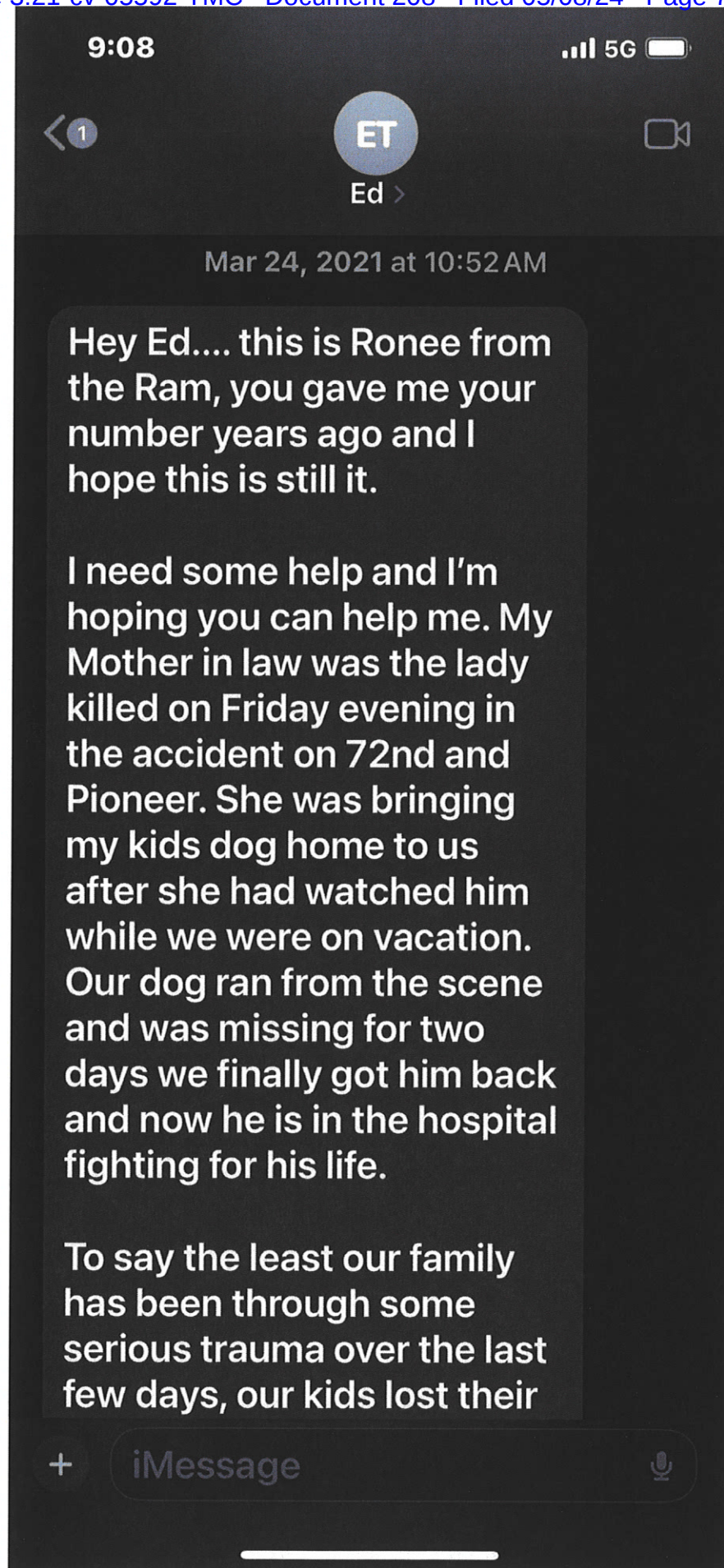








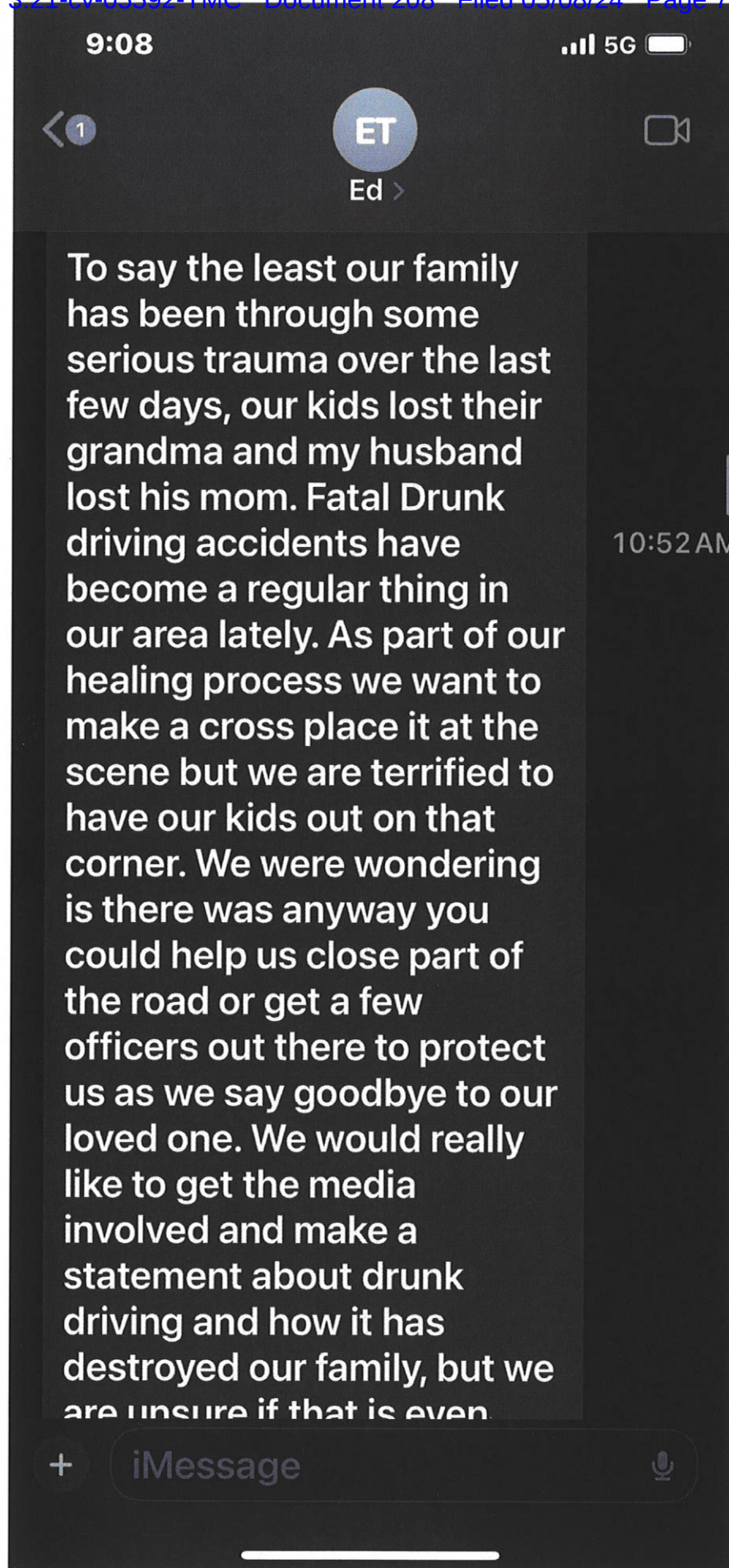


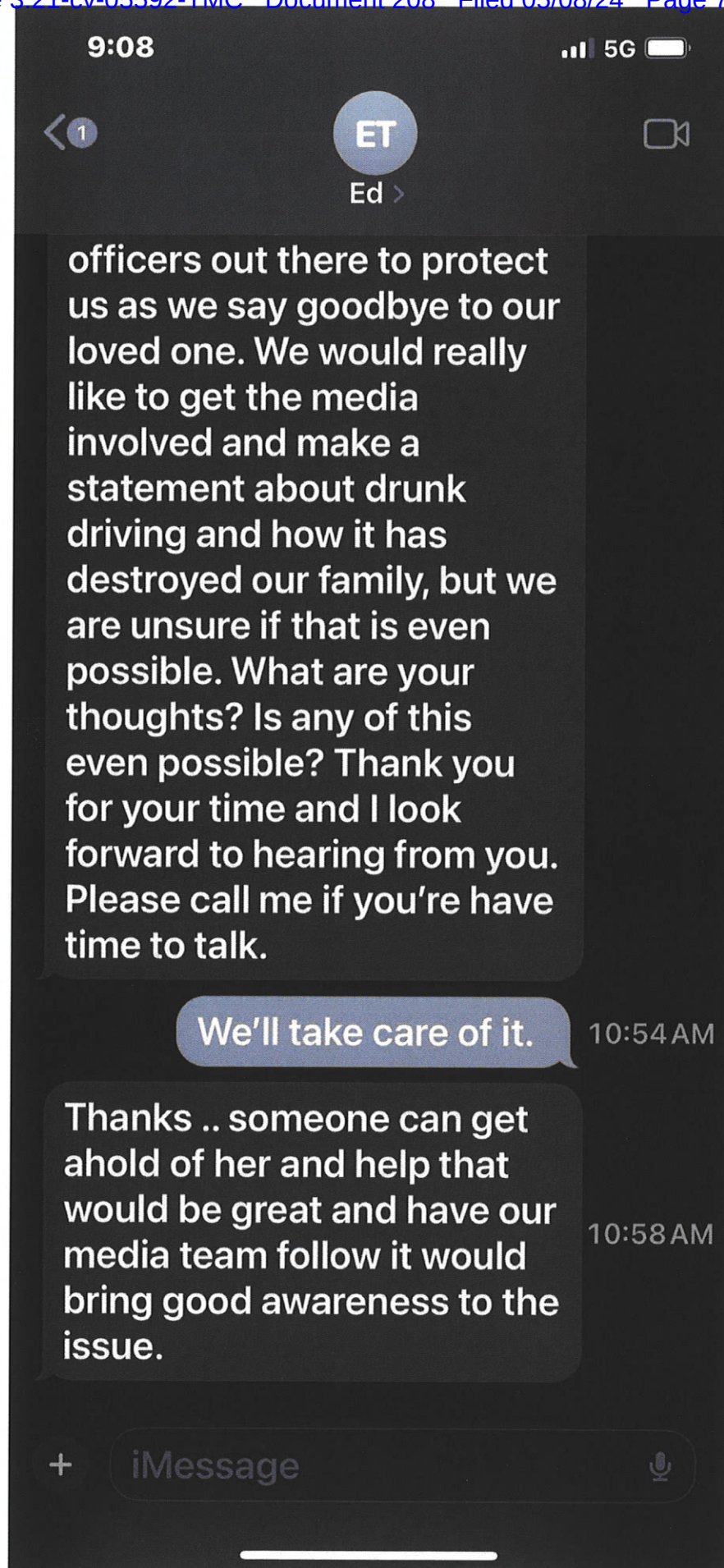


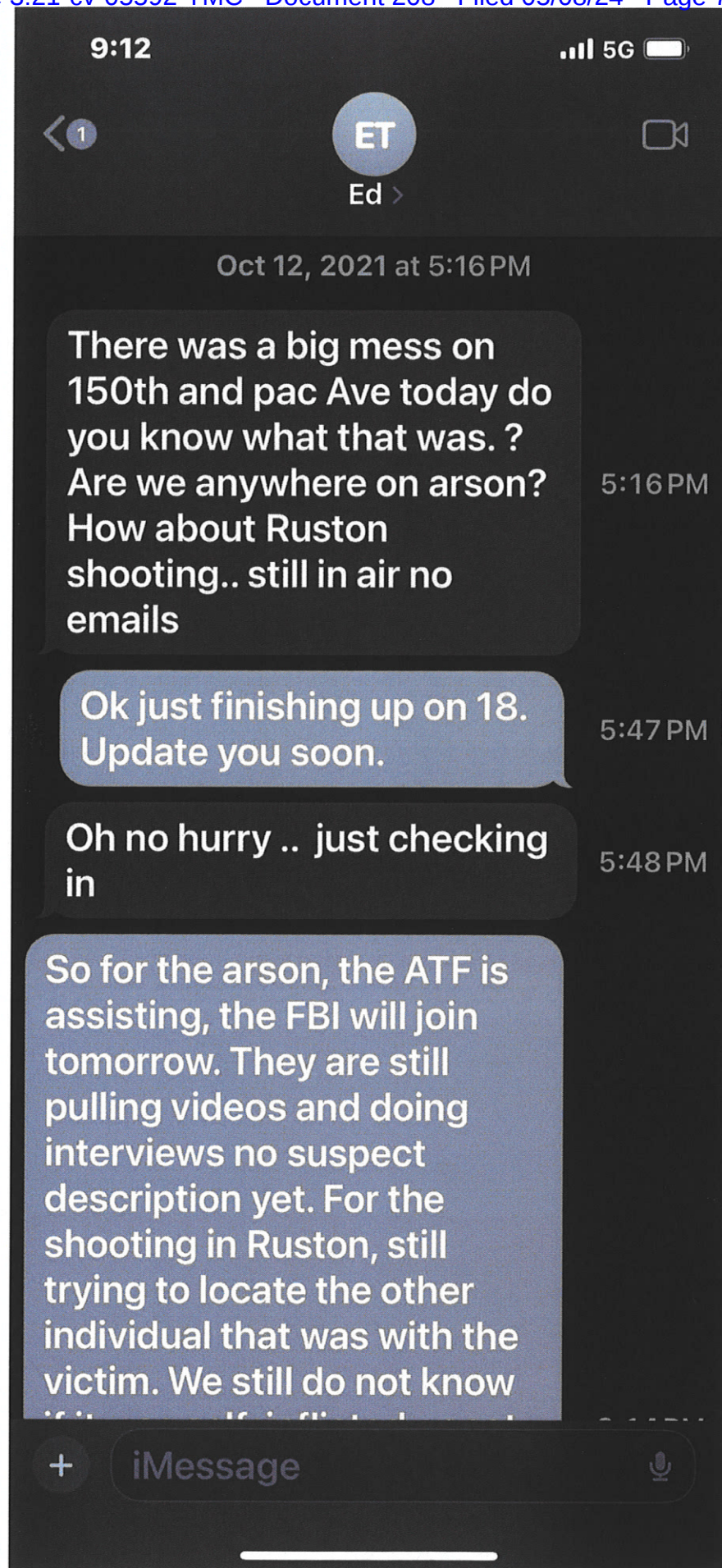
Hey Ed.... this is Ronee from the Ram, you gave me your number years ago and I hope this is still it.

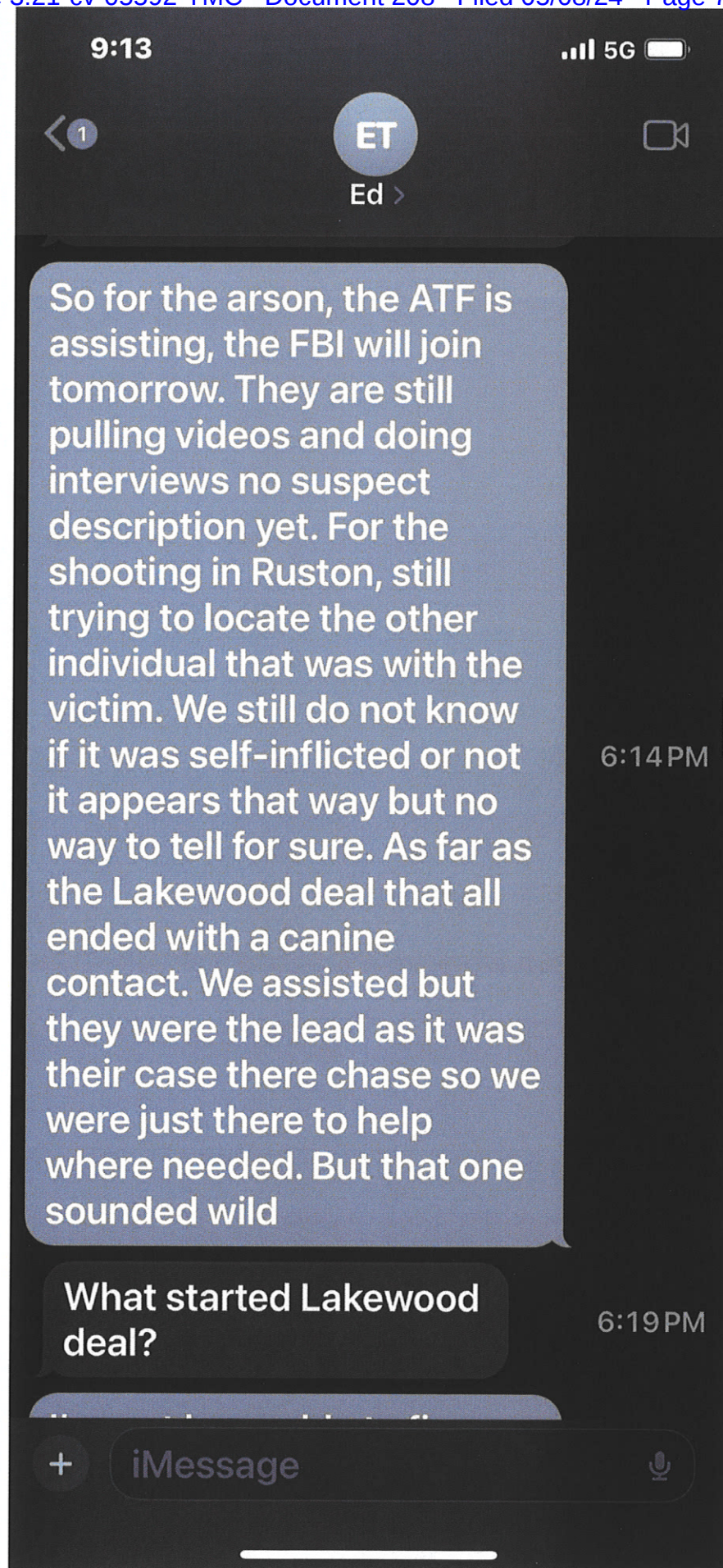
I need some help and I'm hoping you can help me. My Mother in law was the lady killed on Friday evening in the accident on 72nd and Pioneer. She was bringing my kids dog home to us after she had watched him while we were on vacation. Our dog ran from the scene and was missing for two days we finally got him back and now he is in the hospital fighting for his life.

To say the least our family has been through some serious trauma over the last few days, our kids lost their









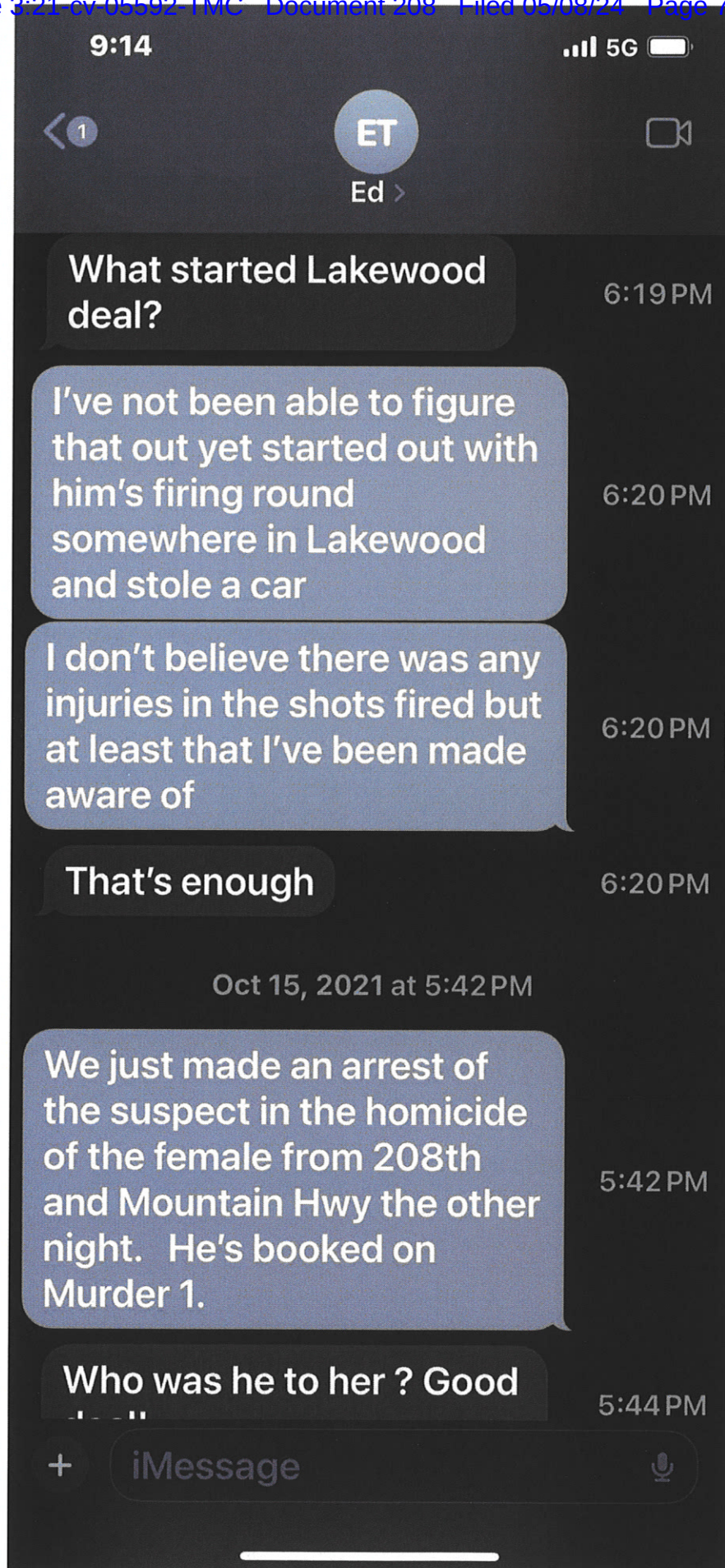


EXHIBIT 6

HAUSNER – PC SPEAKING AGENT

1 Q Dishonest statement by any plaintiff.

2 A I'm thinking -- I'm thinking not.

3 Q Okay. Can you identify any Pierce County
4 Sheriff's Department policy, regulation, procedure, or
5 protocol you allege was violated by any plaintiff and was
6 a reason for reassigning any plaintiff from 2019 forward?

7 MR. CORNELIUS: Object to form.

8 THE WITNESS: No.

9 Q (By Ms. Mell) Can you talk about Pierce County's
10 retention and preservation of text messages after 2019?

11 A Yes. What would you like to know?

12 Q Explain to me the practice and procedure --
13 well, I guess we can start with, who all is assigned text
14 capabilities on county technology within the department?

15 A Anybody that's issued a department cell phone
16 would have the ability to text. The department cell
17 phone is a -- standard issue is the iPhone. There are
18 some flip phones that we issue out on occasion for
19 special circumstances. But generally they are iPhones
20 and they all have texting capabilities.

21 So anybody that is issued a phone -- and not to
22 insinuate that everybody in the sheriff's department is
23 issued a phone, because they are not. But I believe --
24 well, all commissioned staff are.

25 Q What is the policy with regard to use of text

1 messages?

2 A What is -- there is no policy in our policy
3 manual regarding the use of text messages.

4 Q Is there anything in the policy that prohibits
5 use of personal technology for work purposes?

6 A There's nothing in policy the prohibits using
7 personal technology for work, purposes that I'm aware of.

8 Q How does Pierce County retain work-related texts
9 from personal technology?

10 A So if somebody uses their personal phone for
11 personal reasons, it's up to that individual to retain
12 the text messages in some fashion. How they do that is
13 independent of them.

14 Q Are you on a text chain with command staff on
15 your personal phone?

16 A I don't have, like -- I know some people have,
17 like, established text groups. I don't have established
18 text groups, but I have been involved in text messaging
19 between other command staff members.

20 Q Does that include Bomkamp?

21 A Yes.

22 Q And have you looked for and turned those over in
23 this case as to any that relate to this indication?

24 MR. CORNELIUS: Object to form. Beyond the
25 scope.

1 **THE WITNESS: I have reviewed my text messages**
2 **recently, and I don't believe I have any text messages**
3 **related to this case.**

4 Q (By Ms. Mell) Did -- with regard to work
5 technologies and texting, were the texts stored anywhere,
6 captured and stored?

7 A Not that I'm aware of. At the time in 2020, no.

8 Q Are they now?

9 A Text messages are stored now on work-related
10 technologies.

11 Q How are they stored?

12 A They are stored using a system called Smarsh.
13 And what Smarsh does is captures all text messaging --

14 MS. MELL: I'm sorry. There's somebody who has
15 been arrested that I'm trying to make sure they are okay.
16 So hold on just a second. I'm sorry.

17 **THE WITNESS: Absolutely. Give me a chance to**
18 **eat my granola bar.**

19 MS. MELL: Okay. I think that will be the last
20 interruption. They were released, so we should be good.

21 Q (By Ms. Mell) When did you adopt Smarsh?

22 A I believe it was in 2021.

23 Q Why was it adopted?

24 A To have a way to archive text messaging.

25 Q Is it because of this case?

1 **A I don't believe it was because of this case.**

2 Q Was this case a factor in the decision to adopt
3 Smarsh?

4 MR. CORNELIUS: Object to form. Beyond the
5 scope.

6 **THE WITNESS: I'm not aware that it was.**

7 Q (By Ms. Mell) Were you involved in the
8 decision-making to adopt Smarsh?

9 **A I've always had an interest in having the**
10 **ability to capture text messages. But as far as the**
11 **decision-making process with Smarsh, I was not involved.**

12 Q Were Pastor's texts deleted?

13 MR. CORNELIUS: Object to form.

14 **THE WITNESS: I'm not sure if Pastor had any**
15 **texts. I know that during my tenure with Sheriff Pastor,**
16 **I never -- I don't think I ever got a text from him. I**
17 **don't think he was a texting person.**

18 Q (By Ms. Mell) Was there a protocol in place
19 before you got to Smarsh to capture texts on work
20 technology before the phone was decommissioned?

21 **A No.**

22 Q So when was Pastor's phone decommissioned?

23 **A Let me clarify.**

24 MR. CORNELIUS: Object to form. Beyond the
25 scope.

1 **THE WITNESS:** Let me clarify on the first one
2 before we move onto that one.

3 I'm not sure when -- exactly when Smarsh came in
4 and when exactly I authorized the purchase of some
5 equipment in our information technology unit to capture
6 information from phones when they are turned in. So that
7 started happening before Smarsh came into effect.

8 Q (By Ms. Mell) Do you know whether or not you
9 captured text messages in any capacity before Pastor's
10 phone was recommissioned?

11 A I didn't understand the question. Did we
12 capture?

13 Q Taken out of commission, not recommissioned.
14 Taken out of commission?

15 A I don't know.

16 So prior to having these two different
17 technologies, Smarsh and the IT unit's ability to capture
18 some information when a phone was turned in, prior to
19 that, there was no technology to capture text messages.

20 Is that what you were looking for?

21 Q I think I understood that, but I'm trying to
22 understand the time frame of it.

23 A Yeah. So Smarsh was in '21. I think in maybe
24 the third quarter, but I'm not exactly sure. It might
25 have been a little bit later than that. And then prior

1 to that, we bought a -- some technology for our IT unit
2 to capture when people turned in their phones, to be able
3 to capture information that was on the phone. And then
4 prior to that, there was nothing.

5 Q Okay. So were you capturing information from
6 Pastor's phone when it was taken out of service?

7 MR. CORNELIUS: Object to form. Beyond the
8 scope.

9 MS. MELL: How is that beyond the scope, Frank?
10 It's in 5.

11 MR. CORNELIUS: You're asking -- where in 5,
12 Joan? Where does it talk about Pastor's phone in 5?

13 MS. MELL: Pierce County's retention and
14 preservation of text messages after 2019.

15 Whose do you think I'm talking about?

16 MR. CORNELIUS: I'm going to object to form.
17 Beyond the scope.

18 THE WITNESS: I think it's -- I think the
19 question was Pastor's phone and capturing texts from his.

20 Is that correct, Ms. Mell?

21 Q Yes, it is. Thank you.

22 A I believe that it's unlikely that any of his
23 text messages, if there were any, were captured by either
24 one of these technologies, Smarsh or the prior one that I
25 mentioned.

1 Q What about Nordstrom?

2 MR. CORNELIUS: Object to form. Beyond the
3 scope.

4 THE WITNESS: Nordstrom's texts or phones?
5 Yeah, I'm not sure.

6 Q (By Ms. Mell) How about Nielsen?

7 A Same. I'm --

8 MR. CORNELIUS: Object to form. Beyond the
9 scope.

10 THE WITNESS: Yeah, I'm not sure.

11 Q (By Ms. Mell) How about Blair?

12 MR. CORNELIUS: Object to form. Beyond the
13 scope.

14 THE WITNESS: Yeah, I don't think so because I
15 believe -- like I said, this Smarsh was implemented in
16 late third or fourth quarter of '21, around there. And
17 then this other technology was just shortly before that.

18 And depending on when they turned in their
19 phones or when they got new phones or replaced, would
20 indicate when that earlier technology was used because
21 that only captures the text messages when the phone is
22 turned into the IT unit.

23 Smarsh is kind of automated as they happen, and
24 this prior technology is only when the phone is turned
25 in.

1 Q And when you got that prior technology when the
2 phones were turned in, was it when the phone was taken
3 out of use, did you capture all of the texts before
4 deleting it?

5 A Yeah. So whatever was on the phone when it was
6 turned in, would have been captured with the new
7 technology.

8 Q So how do you capture texts for case reports?

9 A I don't know what you mean "for case reports."

10 Q Well, in law enforcement investigations, if the
11 investigators are using texts, how do those texts become
12 part of the investigation?

13 A They could be incorporated into the police
14 report. They could take pictures of the texts.

15 Q But they weren't routinely made part of the
16 investigation?

17 A I don't know. I don't think I've ever used text
18 messaging myself in an investigation.

19 Q So do you know how the prosecutor's office
20 obtained texts from my clients relative to Peres --

21 A I believe --

22 Q -- and for Benitez?

23 A I believe the phones were provided to -- or
24 taken and potentially downloaded.

25 Q Okay. So my clients' phones were confiscated

1 **A I don't know.**

2 **Q How were the tasks assigned?**

3 **A I don't recall.**

4 **Q Do you remember getting Ryan Olivarez's phone?**

5 **A Yes, perhaps. Yes. Yes, I do. Yep.**

6 **Q So did internal IT to the sheriff's department**
7 **search those phones?**

8 **A I don't know who searched the phones.**

9 **Q Were they just -- where did you take the phone**
10 **when you got it and phones you got?**

11 **A I don't recall specifically, but probably to the**
12 **undersheriff.**

13 **Q Was anyone from the prosecutor's office there?**

14 **A Not that I recall.**

15 **Q Did you give any information from the phones to**
16 **the prosecutor's office?**

17 **A Not that I recall.**

18 **Q Who searched their phones?**

19 **A I'm not sure.**

20 **Q What information was taken from their phones?**

21 **A I'm not sure.**

22 **Q Would metadata exist to ascertain the dates of**
23 **destruction of text messages from any of the key**
24 **witnesses in the case?**

25 **MR. CORNELIUS: Object to form. Beyond the**

1 **A I have the one that I already provided and then**
2 **just this one, I think.**

3 **Q Okay.**

4 **A I don't think I did any of these.**

5 **Q All right. So I'll switch gears for a minute**
6 **here.**

7 **A Do you want me to finish with these policies?**

8 **Q No.**

9 **Can you identify any policy on there that speaks**
10 **directly to retaining communications such as texts or**
11 **emails of the sheriff or undersheriff?**

12 **A No, there's no policy regarding text messaging.**

13 **Q How about emails?**

14 **A There is an email policy. That's Policy 212.**

15 **Q What's the retention requirements for email?**

16 **A So the department -- there's actual retention**
17 **set by the State and then there's what the county does.**
18 **So the county is the one who manages the entire email**
19 **system for the entire county. And I believe that email**
20 **is retained for at least six years by the county.**

21 **Q Okay. What facts, if any, were known to Pierce**
22 **County specific to each plaintiff that would suggest any**
23 **plaintiff was corrupt?**

24 **MR. CORNELIUS: Object to form.**

25 **THE WITNESS: So in my mind, corruption means,**

PASTOR

1 **workday.**

2 Q So when you were at headquarters --

3 (Reporter requests clarification.)

4 Q BY MS. MELL: Where were you situated -- when you were
5 at headquarters, where were you situated?

6 A **There was an office designated as the sheriff's office,**
7 **and I occupied that.**

8 Q From your office at the sheriff's department, how did
9 you perform your job functions relative to technologies
10 that you utilized?

11 MR. CORNELIUS: Object to form.

12 **THE WITNESS: With regard to technologies, I**
13 **had access to a cell phone, a computer, and a laptop.**

14 Q BY MS. MELL: No tablets?

15 A **Yes. And, actually, the computer that I had access to**
16 **was a laptop, a computer which I plugged into a**
17 **computer port and the -- I also had a tablet, which I**
18 **had access to and used.**

19 Q And so when you said, "computer" and "laptop," is that
20 one piece of hardware?

21 A **Actually, again, it was an issue of docking a laptop.**

22 Q Okay. So you didn't have a separate desktop,
23 standalone computer?

24 A **Yes.**

25 Q And did you carry two phones or one phone?

1 A I believe I carried one phone. There may have been
2 times when I carried a personal cell phone.

3 Q Do you remember your phone number?

4 A I do not. I'm sorry.

5 Q Did it text?

6 A I believe, at that time, it texted, but I didn't. I'm
7 not the greatest technological person.

8 Q Was there any prohibition against text messaging during
9 your tenure?

10 A I don't recall whether there was or not.

11 Q What was your practice in preserving text messages?

12 A I will not be able to answer that out of ignorance. I
13 don't know.

14 (Reporter requests clarification.)

15 MS. MELL: I didn't hear the objection. Was
16 there one?

17 MR. CORNELIUS: Object to form.

18 MS. MELL: What's the objection to form?

19 MR. CORNELIUS: Yes, there was.

20 MS. MELL: Yeah. Why? What's wrong with the
21 form of the question?

22 MR. CORNELIUS: -- in evidence. It assumes
23 facts not in evidence, Joan, and he testified that he
24 didn't text; so that was the basis.

25 MS. MELL: But he receives texts; so --

1 MR. CORNELIUS: If you want to clarify your
2 question, you can clarify your question. I believe it
3 was vague as well.

4 MS. MELL: Oh, okay.

5 Q BY MS. MELL: Was the phone that was work-related that
6 you used for work issued by the County?

7 A Yes, it was.

8 Q Do you know what kind of phone it was?

9 A Oh, goodness. I think I had three in all -- during my
10 tenure, since we changed out a couple of times. And
11 no, I don't -- I don't recall the brand. I think I had
12 a non-flip phone by the end of my tenure.

13 Q Do you know whether or not it was backed up to cloud
14 storage?

15 A I don't know the answer to that.

16 Q Do you know what your obligations are when acting as an
17 elected official to retain your communications?

18 A I'm not recalling specifics of that, no.

19 Q Do you know that there's a retention schedule
20 applicable to your communications as sheriff?

21 A I believe, in general, I know that communications need
22 to be -- need to be reserved and preserved.

23 Q Do you know how long?

24 A I do not.

25 Q What did you do to ensure that your communications were

1 retained and preserved in conformance with retention
2 laws?

3 A I did not do anything beyond relying on my people who
4 were in charge of data and data preservation in the
5 agency.

6 Q So who's that?

7 A I'm sorry?

8 Q Who's your "people"?

9 A I don't recall names. I'm sorry.

10 Q Did you ever have a conversation with anyone about
11 making sure your communications were retained in
12 compliance with the law?

13 A I don't recall having conversations or not having
14 conversations. I don't recall.

15 Q Did they work for you?

16 A Yes.

17 Q So the people you relied on were sheriff's department
18 employees?

19 A That is true.

20 Q But you don't remember any of them at this point?

21 A I'm sorry. I don't.

22 Q Do you remember ever having any communications with any
23 of them?

24 A I may have, but I recall no specific communication.

25 Q Do you recall ever having done anything to ensure that

1 your communications were properly retained?

2 MR. CORNELIUS: Object to form.

3 THE WITNESS: I just could tell you I have no
4 recollection of discussions about that. They may have
5 taken place, but it's been quite a long time.

6 Q BY MS. MELL: Do you know whether or not your text
7 communications would be routed into your email?

8 A I don't know the answer to that.

9 Q Do you remember getting texts from anyone?

10 A I probably did, but I don't remember specifically.
11 And, as I said, I was technologically a bit backwards;
12 so did not do a great deal of texting myself or any
13 texting myself.

14 Q Were you part of any group text?

15 A You know, I don't recall whether I was or was not.

16 Q Did you use any instant messaging programs to
17 communicate?

18 A I don't know the answer to that. In fact, I'm not sure
19 I know what an instant messaging program is. I'm
20 sorry.

21 Q Did you -- strike that.

22 Did you utilize any technical or software systems
23 that allowed you to communicate with a group of your
24 subordinates from your tablet or your phone without
25 calling them?

1 MR. CORNELIUS: Object to form.

2 THE WITNESS: I know that I emailed people
3 and emailed them about meetings or emailed them about
4 questions of particular projects that were ongoing.

5 Q BY MS. MELL: Do you recall having any, like,
6 Microsoft Teams program? Are you familiar with
7 anything like that?

8 A I'm sorry. I don't -- I'm not familiar.

9 Q Did you use your personal cell phone to communicate
10 with any of your subordinates?

11 A I do not believe -- I know I didn't do it regularly
12 because I tried to reserve my personal cell phone for
13 family calls.

14 Q Have you searched your personal cell phone for any
15 communication data related to this lawsuit in response
16 to the discovery propounded to the County?

17 A I have not.

18 Q Why not?

19 A Well, number one, it did not occur to me. And number
20 two, I got a new cell phone shortly after I left, a new
21 personal cell phone.

22 Q What kind of personal cell phone did you get?

23 A I got an iPhone.

24 Q Did you have an iPhone before?

25 A You know, I'm sorry. I can't recall whether I did or

1 **did not.**

2 Q Do you have a cloud for your personal data?

3 A I believe there is data that I'm storing currently on
4 the cloud. I don't know if that goes through my cell
5 phone, but I know there is storage on the cloud from my
6 personal computer at home.

7 Q And do you know whether or not that dates back to your
8 tenure with Pierce County?

9 A I believe the question was to -- was to personal cell
10 phone and saving on the cloud. And, again, the
11 personal cell phone is new after I left the County.

12 Q Well, you had a personal cell phone before, you just
13 don't remember what it was; right?

14 A Right.

15 Q Okay. So do you remember whether or not you were
16 cloud-storing data from the cell phone you had prior to
17 leaving the County?

18 A I'm sorry. I do not.

19 Q And is it correct that you have not searched -- well,
20 strike that.

21 What do you have in terms of technology at home?

22 A laptop or desktop?

23 A I have a desktop, and I have a tablet.

24 Q And what's the tablet? Is it -- Apple product? Or
25 other?